(2)

Supreme Court, U.S.
FILED

No. 04 739 NOV 23 2004

SUPREME COURT OF THE UNITED STATES

GERALDINE MILLS, M.D.

Petitioner,

v.

PATRICIA A. NOLAN, M.D., M.P.H.
DIRECTOR, DEPARTMENT
OF HEALTH

Respondent

On Petition for a Writ of Certiorari to the
Supreme Court of Rhode Island

PETITION FOR WRIT OF CERTIORARI

November 22, 2004

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QUESTIONS

Are there substantial due process questions and is the decision below so wrong and " so totally devoid of evidentiary support as to render it unconstitutional under the Due Process Clause of the Fourteenth Amendment" or on " any evidence at all."

Is due process denied when Appellant is informed she will not be allowed to see her own mental health records after the evaluation is completed?

Was Appellant denied due process when reports were made to the NPDB, other licensing Boards that she has a mental disorder (with no evidence of same on record below and done prior to any hearing at all)?

Was due process denied at the Administrative Hearing wherein Appellant was denied all supporting evidence and witnesses?

Was due process denied after the Hearing but prior to the final decision of the Board (proceedings still ongoing) wherein Appellant was denied reopening for all supporting evidence and witnesses three times? Was due process denied, was it conflict of interest for Attorney General Sheldon Whitehouse to file C.A. No:PC 00-229 against Speedy Oil, Inc et al and then represent as Counsel for McIntyre/Board in objection to Appellant's motion to the same court to allow case 00-229 as her supporting evidence to counter false allegations that she was " bizarre, irrational, or delusional to believe the contamination existed?

Was due process denied Appellant when lower court denied motion for letters rogatory to Bridgeport Hospital and for leave to submit all supporting evidence and witnesses?

Was Appellant's right to due process denied when Counsel for

the Board held four positions at the Board, exerting undue influence on Hearing panel; 1) was a witness, 2) directly investigated all matters?

Was due process denied as Counsel Bruce W. McIntyre was counsel for Director of Health concurrently with being counsel on medical board (prosecuting counsel at hearing), investigating member and witness to events with Appellant not privy to any others; with tenure in excess of twelve (12) years in violation of R.I. Gen Laws?

Was Appellant's property interest deprived her without due process?

Is decision of the R.I. Lower court in conflict with the US Supreme Court's Decision in Patrick vs Burgett case wherein it was concluded there was no immunity because state did not have authority to review anti competitive action undertaken by peer review committee? (Does issue of how active a State's regulators must be before the " active supervision" requirement will be satisfied still result in questions for Court of Appeals? Do state regulatory programs fail to provide immunity for lack of active supervision under test adopted by Court of Appeals citing Patrick v Burgett/California Retail Liquor Dealers vs Midcal Aluminum, Inc?

Does conditional privilege exist for the Witnesses when with intent to harm and malice are present?

What is the real nexus between parties Brown,Cinquegrana, Bruce W. McIntyre for R.I. Medical Board- private parties working with state official, state actor or private parties?

Was it unconstitutional to deprive Appellant of the following : R.I. Gen Law 5-37-8 1) her right to maintain an unrestricted medical license until a hearing as Appellant had ceased seeing

patients and was not therefore an " immediate danger to the public"

2) her right to a full and fair hearing within ten (10)days after such a temporary suspension (to include specification of charges and adversarial witness list)

R.I. Gen Law 5-37-2.1 (10)

3) her right to a list of names of physicians (medical and psychiatric) to evaluate her if probable cause existed to believe that allegations of misconduct were caused by an impairment which directly affected her ability to conduct her practice "professionally."

4) her right to not be alleged with unprofessional conduct if the cause of the conduct is related to a disability?

5) her right to witnesses and supporting evidence to prove a disability and that others also had similar difficulty with the air quality of the buildings.

R.I. Gen Law 5-37-2.1 (11)

6) her right to hear advice of the availability of the physicians health committee of the Rhode Island Medical Society prior to summarily suspending her?

R.I. Gen Law 5-37-5.2 (d) and R.I. Gen Law 5-37-5.2 (e)Public Dissemination under the Administrative Procedure Act (APA)

7) her right to have a hearing PRIOR to the making public all decisions (report of indefinite suspension prior to a hearing, report that Appellant had a mental disorder prior to the close of hearing)

8) her right to a full and fair hearing which was not prejudiced by the publishing of a notice prior to a hearing process being completed which is not based upon the provisions

of R.I. Gen Law 38-2-2

14 110 001-13 Rules and Regulations of the Medical Board Rule 4 b Notice to the Physician

9) her right to receive all complaints as served by the Board upon the filing of a complaint

10) her right to receive all complaints in unaltered form as the original handwritten by complainant

R.I. Gen Law 5037.3-4

11) her right to not release confidential health care information in the form of medical records of patients without the written consent of the patients (parents or guardians in the case of children) on a consent form meeting the requirements of subsection (d)

R.I. Gen Law 40-11-6

12) her right when she has cause to suspect that a child has been abused or neglected to report the incident(s) to a department as provided in subsection (b) in this case the DCYF Department of Children Youth and Families of R.I. and the department upon receipt of such report shall thoroughly investigate the report (all injuries not excluding sixteen (16) of them) and examine the children if investigation reveals evidence of physical abuse

Was due process denied Appellant when Counsel for the Board made agreement with Appellant's counsel to pre approve a mental health evaluation of Appellant, then alleging to have never made agreement

Was due process denied Appellant when Counsel for the Board reported to the National Practitioner Data Bank that Appellant has a " mental disorder" without evidence of such

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INTRODUCTORY PARAGRAPH

Appellant, Geraldine Mills, M.D. is appealing from the judgment below as ordered by the Rhode Island Supreme Court in the case of Mills v. Patricia Nolan, M.D. Director of the Department of Health State of Rhode Island, and so signed on September 23, 2004. This petition for Writ of Certiorari is submitted to show that this Honorable United States Supreme Court has jurisdiction of this appeal and that substantial questions are presented.

CITATIONS TO OPINIONS BELOW

The lower Superior Court denied Appellant Mills an administrative appeal from a July 11, 2001 decision by the Rhode Island Department of Health, indefinitely suspending her license to practice medicine. The court found in favor of the R.I. Medical Board's decision that Mills was in violation of 1956 R.I.G.L. 5-37-5.1 with an amended specification of charges of seven counts of unprofessional conduct. The Rhode Island Supreme Court arbitrarily denied Mills a timely filed writ of certiorari. Therefore, being arbitrarily denied a petition for writ at the highest state court, Mills knew a motion to reconsider based upon all court decisions was futile. The lower court cited in its decision-standard of review @17, " the court's review of a decision by the Department of Health is controlled by R.I. Gen. Laws 1956 42-35-15 (g) which provides for review of a contested agency decision: (g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.....or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) in violation of constitutional or statutory provisions (2) in excess of statutory authority of agency (3) made upon unlawful procedure (4) affected by other error or law (5) clearly erroneous in view of reliable, probative, substantial evidence on the whole record; or (6) arbitrary capricious or characterized by abuse of discretion or clearly

unwarranted exercise of discretion." Lower court found in favor of Board's decision by concluding the decision was supported by competent evidence in the record. They further found there was by the fair preponderance standard, substantial evidence to find unprofessional conduct on the part of Appellant for each of seven counts. Lower court addressed these as (1) DCYF complaint @ 19, (2) treatment outdoors @ 21, (3) Williams syndrome @ 24, (4) record transfer issue @ 25,(5) evaluation issue @ 27, (6) Rhode Island Hospital application @ 27. Adequacy of Evidence, arbitrary and capricious, investigatory, adjudicatory, advisory functions, and sanctions were cited last.

JURISDICTION

This case falls within this Court's Jurisdiction under 28 U.S.C. 1257 (a) and offers an ideal vehicle to resolve the questions presented. This Court has jurisdiction under "fourth Cox category" to review state court ruling if 1) "reversal of state court on Federal issue would be preclusive of any further litigation on relevant cause of action, 2) refusal immediately to review state court decision might seriously erode federal policy." Cox Broadcasting Corp Cohn 420US 469,482-83 (1975), for application of this general jurisdiction rule. Petitioner is so favored by this Court, would deem the state law causes of action by Rhode Island Superior and Supreme Courts unconstitutional as so applied. In instant case what is at stake is the risk of setting precedent to further deprive Physicians throughout these United States from their civil and constitutional rights to defend themselves. It would further "seriously erode federal policy" as it would apply to one's due process under the Fourteenth Amendment. Judgment of Supreme Court of Rhode Island was entered September 23, 2004 and was arbitrary denial of petition of writ of certiorari. Review of state court judgment is sought. Federal questions were raised in the lower court record. Constitutional rights were denied under Due Process Clause of Fourteenth Amendment. Issues are lack of evidentiary support, unlawful procedure abuse of discretion, error of law and violation of constitutional provisions and appellant's due process, as appellant pled to R.I.

courts. " The United States Supreme Court has stated that citizens have a 'protected property interest' in licenses granted to them by governmental agencies. In Schware v.Board of Bar Examiners 353 U.S. 232,238-239,77 S.Ct. 752,756,1 L. Ed 2d 796,801(1957) it states, " the state cannot exclude person from practice of law or any other occupation in manner or for reasons that contravene due process or equal protection clause of fourteenth amendment." R.I. Supreme Court in Millett v Hoisting Engineers' Licensing Division 377,A.2d 229 (1977) the procedural safeguards that must constitutionally attend granting or revoking licenses follow no certain formula and due process within administrative procedures requires opportunity to be heard in meaningful time and manner. Due process cannot tolerate a licensing system that makes privilege of doing business dependent on official whim." Under existing law state agency and court bear burdens to prove by preponderance of evidence in former, competent evidence on record in latter, that allegations raised are both true and sufficient to warrant the drastic indefinite suspension imposed, now more than five years on Appellant. R.I.G.L. 5-37-6.2 imposes the Hearing Panel is required to make findings of fact and law. The court is not to substitute its judgment for the Board but it is to determine if there is sufficient competent evidence on record to support their conclusions. It is error of law to take statements and expressions of prosecuting counsel, Bruce W. McIntyre as evidence, to allow omissions of necessary supporting evidence and alter meaning of testimony by taking it out of context and deleting parts of statements as testified. Court's deliberation must only be on the testimony as admitted in hearing process. Regardless of motivations of agency, violations of law render the actions of governmental agency defective and violate due process requirements of the United States Constitution. The court did not even address issues where Counsel McIntyre acted in contravention of laws, rules, regulations that govern the agency for which he holds a minimum of three positions; at times to include Acting Chief Administrative Officer. Well established

within law where an agency acts in contravention of the regulations that govern it, it acts in violation of the law, Paul v United States 371 U.S. 245,255,83 S.Ct.426,433,0L.Ed.2d 292(1963). Mills alleged misrepresentation as well as violation of law. This predated even R.I. Constitution as Russell v. Clark's Ex'rs Supreme Court of The United States,11 U.S. 69;3L.Ed.271;1812 U.S. LEXIS 368;7 Cranch69 February, 1812 Term, for an early misrepresentation case. This civil cause of action is by formal definition under R.I. case law, any manifestation by words or other conduct by one person to another that under circumstances amounts to assertion not in accordance with facts. Allstate Ins Co v Robert P Russo et al,641 A.2d 1304(R.I.1994) Mills refers to a letter dated Oct. 1,1999 by McIntyre to the psychiatrist whom Mills made an appointment with. Prior to Mills' scheduled appointment McIntyre told her that Mills refused to see a Psychiatrist for over a year. The letter also reads that Mills would not be allowed to see her own mental health records. Mills had not been provided a list of potential psychiatric providers as per R.I.G.L. 5-37.1.3(10). Therefore, this follows as both misrepresentations and violations of law by agency/McIntyre. The lower court did not address this issue. A litany of events engaged in by McIntyre resulting in deprivation of substantive and procedural due process of Mills were so set forth from the inception of this case. It is not number of references that governs but rather the substance of allegations and nature of their motivations which are replete with malice. Having alleged sufficient facts as against McIntyre implicating him in his individual capacity, his tenure outside limitations of state law both in time and number of positions, actionable misconduct-that is civil rights. Jurisdiction of state court was invoked under Title VII of thc Civil Rights Act of 1964 as amended by Equal Employment Opportunity Act of 1972 U.S.C.2000 and under 28U.S.C.1331. Mills was denied her procedural,civil, and constitutional rights and denied a writ of certiorari arbitrarily as pled in Argument.

STATEMENT OF THE CASE

Appellant, Geraldine Mills, M.D., a Pediatrician, was so engaged as such from 1989 until September 22, 1999, when at an investigatory meeting (no stenographer or record of meeting taken), Bruce W. McIntyre told Mills to cease seeing her patients as of that day. Mills not only had over 700 families in her solo practice but medically cared for over 15,000 other families while doing call for more than ten other Pediatricians throughout Rhode Island. Mills has never had any malpractice action taken against her, never had any adverse incident as harm or injury to any patient at her hand. There were no complaints brought before the Medical Board by any hospital (inclusive of Rhode Island Hospital), not by any member of her call group. Mills was favorably credentialed each year by the Chief of Pediatrics at St Joseph Hospital, then Alfred Toselli, M.D.(Toselli) On December 17, 1993 Mills was placed on full active staff in Pediatrics at St Joseph at the recommendation of in part Toselli. However, on March 31, 1994 Mills in a hearing for privileges at RI Hospital, was told that Toselli had spoken to one John J. Cronan, M.D. (Radiologist at RI Hospital) and told him, " she is a near bordering psychotic with a litigious brother a lawyer to fight her legal battles for her, I would never hire her again, she was incapable of doing the job." Toselli in deposition May 18, 2000, testified that he "personally kept Mills off staff at RI Hospital. Yet Toselli wrote to the Massachusetts Medical Board on two separate occasions that Mills was " good" in all qualifications. Toselli did hire Mills again on May 31, 1994 Memorial Day. Mills agreed to his request that she do call again for the St Joseph Pediatrics Department and completed the 24 hour rotation completely unsupervised. At this time Mills was no longer employed by the hospital but was on the full active staff while practicing solo Pediatrics. (See Appendix for full explanation) Mills filed suit against John J. Cronan, M.D. for the slander, the discrimination as Dr Cronan

stated, " we don't deal with those foreign medical graduates (FMG's) here,"and other misquoting, tampering and removal of witness testimony. (See appendix)

After the above incidents, Mills began receiving threatening calls to her private office by Bruce W. McIntyre of the R.I. Medical Board. (See appendix) The harassment slander and interference with her medical practice resulted from the acts of misconduct and malfeasance, misfeasance of several individuals to include Alfred Toselli, M.D., John J. Cronan, M.D. and Bruce W. McIntyre. The only way to remove Mills from practice and to permanently destroy the business Mills had built was to create problems within those entities which supported the core of her business- her on call group and the day care to where most of her patients attended.

Mills' call group was started by Dr Pietro Russo, before she joined it. McIntyre made a witness list on December 10, 1999 which listed many of the doctors in Mills' call group. McIntyre wrote they were all going to testify to the alleged, " aggressive and threatening behavior " of Mills. McIntyre wrote that Russo was to testify that Mills threatened him " antisemitic." Mills contacted Russo immediately upon receipt of the witness list on December 20, 1999. Dr. Russo told her that," I never talk to the Board, never. I never said you said something like that." On May 18, 2000 Toselli in deposition, in the presence of McIntyre (without private counsel present) testified that one month prior he had received a call from Russo during which Russo told him that Mills had threatened him (Russo) antisemitic. Toselli testified that this was the only threatening remark he could remember that Mills made, having known Mills for over ten years. Toselli was unaware that Mills had already spoken to Russo and that Russo had written to Mills that he never told anyone that she had called him antisemitic. None of the call group doctors testified against Mills.

McIntyre told the Director of C.H.I.L.D.,Inc day care that "something is in the works for Mills to lose her license." McIntyre involved directly in all actions of misconduct was a

witness to each and every situation that has led to the taking of Mills' property interest in violation of her constitutional rights.On October 25, 1999, Mills not represented by counsel, but consulting with an attorney (refrained from taking case as he was a criminal lawyer), was contacted through this counsel by McIntyre to as he described it, " make a deal." McIntyre had already reported to the NPDB that Mills was fully and indefinitely suspended for unprofessional conduct even though a hearing was not to occur for another year. This alone violated the APA(Administrative Procedure Act) as well as all R.I.G.L. At this meeting, which Mills' brother Attorney Stephen Mills attended, McIntyre stated, " I never lose in court," and "your sister will never practice again."

The following is a description of the proceedings and the rulings of the lower courts.

Mills told to cease seeing patients September 21, 1999

Mills at investigation hearing September 22, 1999 (no stenographer present) Mills attempted to present records on the gasoline contamination of her building but was rebuffed.

Mills reviews Brown records September 25, 1999

Mills contacts DCYF October 5, 1999

Investigation meeting Mills not informed about votes to temporary suspend Mills October 13, 1999

Temporary suspension order signed by DOH October 19, 1999

Hearing begins August 23, 2000

Hearing ends December 7, 2000

Mills motions to reopen for supporting evidence January 30, 2001

Mills brings claim against McIntyre/Board March 1, 2001 to obtain an injunction

Mills appears in Superior court for first time on license issue on March 16, 2001 and injunction is deferred to June 16, 2001

Mills brings second motion to reopen for evidence May 16, 2001

Mills brings claim against Toselli June 14,2001

Mills contacts DCYF July 10,200 requesting meeting re: suspicion of child abuse on Brown family

Board signs full suspension of Mills license July 10, 2002 and DOH signs it July 11, 2001

Mills appeals decision August 9,2001 in time

Mills files brief on Appeal July 3, 2003

Opposing brief filed July 28,2003

Mills files rebuttal brief August 28, 2003

Mills appears in Superior Court to obtain subpoena of NEAR SIDS records from Bridgeport Hospital September 23, 2003 and decision is deferred to November 6

November 6, 2003 Mills is denied subpoena and motion to reopen for all supporting evidence including 6 psychiatric evaluations (last pre-approved by McIntyre/Board

November 13, 2003 Mills is denied her appeal

December 8, 2003 Mills submits her petition for writ

Objection is filed by opposing counsel

R.I. State Supreme Court denies Mills writ of certiorari September 23, 2004 and sends notice to Mills September 28

ARGUMENT-REASONS FOR THE GRANTING OF WRIT

The instant case is about the denial of an individual's right to their property interest, their livelihood. Geraldine Mills, M.D. has been deprived of her sole means of income for five years to date, has been the subject of irreparable harm. She has been denied all supporting evidence and witnesses necessary to prove facts on the record, even those asked for by the Hearing panel. She has been the subject of myriads of violations by legal Counsel of the Medical Board, State of Rhode Island, Bruce W. McIntyre who in his actions was witness outside the proper scope of his duties as legal counsel.

The Constitution of the United States mandates that due process be afforded before a " property interest" be deprived. This very information is so stated in the Administrative Procedure Act and Rules and Regulations on agencies in the

State of Rhode Island. It furthers, " A long history of case law has held that professional licensees have a " property interest" in the professional license. An Administrative Hearing notice is issued together with a specification of charges and is served upon the physician. The hearing will be conducted in accordance with the Administrative Procedures Act. This act governs the manner in which hearings before governmental boards and agencies are conducted."

Under 28 U.S.C. 1257 (a) Appellant's right to due process of law is called into question. This reads in part, "..... .....no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

On September 22, 1999 Mills ceased seeing patients as ordered by Bruce W. McIntyre Counsel for the R.I. Medical Board at an investigating hearing. Yet on October 19,, 1999 the Director of Health Patricia Nolan, M.D. summarily suspended Mills even though she had already agreed to stop the Practice of Medicine and posed no threat to any patient. R.I.G.L. 5-37-8 gives full authority to the Director to summarily suspend a license immediately without a hearing only if "the continuation in practice would constitute an immediate danger to the public."All decisions must be" rational and logical," and derived in a " meaningful time and manner." The immediate action taken by the Director did not meet any of the above in that the Appellant was not seeing patients, and a hearing did not begin until more than one year later, August 23, 2000 (completion in December 2000).

28 U.S.C. 1257(a) does allow the jurisdiction of this Court to review decisions of the state courts where the validity of a statute of any state is drawn into question. It is not rational nor logical to infer that Mills would be of any immediate danger to any patient when she was not seeing any. With that erroneous conclusion aside, the Appellant's further privileges were

abridged when a " fair and meaningful hearing in a timely manner, " did not take place. No hearing took place in ten (10) days, the hearing once scheduled was drawn out over six months with only two adversarial witness families, the Board took 7 1/2 months to make a final decision and motion to reopen for all supporting evidence and witnesses January 30, 2001 was not answered for four months (not until after Mills motioned the court for an answer and injunction). At no time was the Administrative Hearing conducted in accordance with the Administrative Procedures Act, " an act which governs the manner in which hearings before governmental boards and agencies are conducted." Further, the hearing panel is to be composed of three members of the Board who did not serve on the Investigating Committee. It is to consist of at least one physician and one public member and one person to preside over the process as chairperson. No member of the Board who participates in the investigation may participate in any subsequent hearing or action taken the remainder of the board as cited in R.I. Gen Law 5037 -5.2 (d) This is to preclude any exercise of influence over the Hearing panel. The Board is to be composed of as per R.I Gen Law 5-37-1.1, (6) licensed physicians, (5) public members, one of whom shall be an attorney with experience as plaintiff's counsel in the presentation or prosecution of medical malpractice a question as to whether McIntyre has that experience, the other a member of the general public not associated with the medical field who shall have attained the age of at least (60) years.....This therefore means that a member of the Board one of which is the counsel with experience in prosecution of medical malpractice (that alone questionable), who participates in the investigation may not per R.I. statute participate in any subsequent hearing for reason being, it would violate ones' due process by exercising undue influence over the Hearing Panel. This was the "role" of Bruce W. McIntyre but not only as above but he acted as witness to a myriad of events to which noone else was privy to, all of which involved the Appellant. R.I. Gen Law 5-37-1.1

furthers reads as to tenure that "....in the absence of the chairperson, the board shall elect from its members a vice-chairperson who shall exercise all powers of the chairperson who shall serve for one year or until their successors are appointed..... McIntyre held this position for more than two years consecutively and simultaneously with position of investigating member of the Board, counsel for and on the Board and prosecuting counsel as above. When Appellant began private practice in 1994, McIntyre was representing all these positions except that of Acting Chief Administrative Officer. At the hearing in 2000, he still maintained all these positions at the Board. The statute reads, " no member shall be appointed for more than two (2) consecutive full terms." As the record below clearly cites, McIntyre with abuse of his powers invested him, with abuse of discretion did so " unfairly taint the proceedings," as per decision of the lower court. On December 8, 1999, Appellant's counsel did motion to dismiss McIntyre on the basis that he was a witness to events that noone else could testify to, that he repeatedly not only injected questions, as the lower court decision reads, but that he made statements (as early on as the first date of the Hearing to prejudice Appellant from the start) about his firsthand knowledge of events and gave his own characterization of what had occurred.

The lower court failed to raise any of the issues of violations of statutes referred to in Appellant's brief as early on as at page 2 of a 41 page brief (footnote 2), reads as, " Dr Mills filed an appendix to her complaint which addendum sets out additional reasons why the Board's order should be reversed." The Supreme Court will not consider court issues when not raised below in such a manner that the justice may have had opportunity to address them. They were all raised below but simply ignored by the lower court whose duty is to make a careful and searching inquiry. 2Am.Jur.2d,Administative Law 531, at 520-21 reads as in part," In making a factual inquiry concerning whether an agency decision was arbitrary or capricious, the reviewing court must consider whether the

decision was based on a consideration of relevant factors and whether there has been a clear error of judgment.....searching and careful.....to determine whether ....decision, in the context of the record, is too unreasonable given its statutory and factual context, for the law to permit it to stand.....whether agency abused its discretion on legally relevant factors, or by omitting to consider legally relevant factors, those the legislature intended the agency to consider in reaching its decision in cases like the one in question." Even a failure to raise a constitutional issue at the administrative level does not preclude its litigation in the court as cited in Randall v Norberg 121 R.I. 714,403 A.2d 240 (1979).

McIntyre did not just investigate the instant case but he found the adversarial witnesses, aided them in producing their complaints (altering the complaints from the originals as produced by the complainants). This is in violation of state statute 5-37-5.2 (a) which reads, " any person, firm corporation...may submit a written complaint..., and rules and regulations at 14 110 001-13 which reads in Rule 4b Notice to the Physician, " upon filing a complaint the Board shall serve upon the physician involved a copy thereof." The complaint must be investigated by the Board (in this case fully and/or in part by McIntyre) to determine whether it merits consideration or whether it is frivolous or unfounded. It was in violation of Appellant's due process that McIntyre aided in the production of the complaint (as altered from original), then determined it was with merit, and then prosecuted the issues before the Board.

ONLY ONE COMPLAINT

McIntyre sent Appellant a letter dated September 25, 1998 (mailed September 28,1998 but had a return receipt notice attached at the bottom dated the 25th) which reads, ".....due to the multiple complaints regarding the transfer of medical records we authorize our right to require an evaluation of you..." Section 5-37-1.3 (10) of RI Gen Law provides that the board may require a physician to undergo a physical or

psychiatric examination " if probable cause exists to believe that allegations of misconduct against a licensee are caused by an impairment which has directly affected the ability of the licensee to conduct his/her practice professionally." When Appellant (Mills) received this letter, she had not received any complaint(s). On October 15, 1998 Mills received a typewritten complaint from the Board as affidavit of Deborah Cinquegrana. On February 10, 1999 Mills' counsel wrote to McIntyre as follows (see appendix) " If other complaints of professional misconduct have been filed which in any way constitute the basis for the board's demand for an examination, I request copies be provided to me immediately." None were forthcoming. The "sole" basis for the board's demand that Mills undergo an " examination/evaluation" (though the letter of September 25, 1998 did not specify what type of examination)was the one complaint of Deborah Cinquegrana. Appellant takes leave to cite the case of Mills vs C.H.I.L.D., Inc docket # 04-422 wherein a nexus between the Director and McIntyre alludes to " difficulties in the transfer of medical records," though no medical records were not forthcoming as admission of the Director herself. It is believed that Cinquegrana (recently changed day cares due to her difficulty with a day care Director as read in record below pg 18-19 Tori medical chart) was the vehicle by which McIntyre would create an issue to deprive Mills of her property interest and livelihood. The original handwritten complaint of the witness Cinquegrana, alludes to her husband not signing a release for his children's medical records so as to transfer them to a succeeding physician. The altered complaint (aided by McIntyre does not address this issue). The mother testified that the father did not sign the releases and the father testified he did. Mills contends that no releases were signed.

It must be noted that although Dr Mills had over 700 patients and did call for thousands others, only TWO families were involved in testifying against her, demonstrating the isolated nature of the complaints against her.

R.I.Gen Law strictly enforces the following at 5-37-3-4 Limitations and permitted disclosures. (A) Except as provided in subsection (b) or as otherwise provided by law, a patient's confidential health care information shall not be released or transferred without the written consent of such patient or his or her authorized representative, on a consent form meeting the requirements of subsection (d).....(1) Any person who violates the provisions of this section may be liable for actual and punitive damages....(3) Any person who knowingly and intentionally violates the provisions of this section shall upon conviction, be fined not more than five thousand ($5000) dollars for each violation or imprisoned not more than six (6) months for each violation, or both.....(e) Except as otherwise specifically provided by law an individual's confidential health care information shall not be given, sold, transferred, or in any way relayed to any other person not specified in the consent form or notice meeting the requirements of subsection (d) without first obtaining the individual's additional written consent on a form stating the need for the proposed new use of such information or the need for its transfer to another person...

The lower court " never" addressed the issue of written consent or release forms. The decision only reads about issue of unpaid medical bills. The certified lower record does not support the Justice/Board's conclusion, "...the testimony of...parents that the Appellant made the payment of a disputed bill a condition precedent to sending said records." It is in violation of Mills' constitutional rights to force her with threat of suspension to release confidential health care information on patients without their written consent. This is not only in violation of RI Gen Law but of Federal HIPAA regulations. As further evidence to the violation of Mills' due process is that in March 2000, McIntyre demanded the release of a family's confidential health care records once again without the written consent by the parent(s) (in that they were children). Mills had sent the family three sets of releases and none were ever signed and returned as per RI statute. Mills' counsel wrote to McIntyre

stating that this did not "comport with the law," and that it would be addressed in another forum. This court has the authority to address the instant issues because they are reasons for Mills being denied her property interest and due process as per the Fourteenth Amendment.

FULL EVALUATION BASED ON ONE COMPLAINT

In the letter of September 1998, McIntyre demanded a full " evaluation" of Mills. Though the type of evaluation was not specified and no physicians' names were given to Mills it is now known that he meant it to be a psychiatric evaluation (as to date Mills was never tendered any names of medical evaluators). The statute reads that " probable cause must exist to believe that allegations of misconduct are caused by an impairment which has directly affected the ability of the licensee to conduct themselves professionally."

At this point in time, 1998, McIntyre had given Mills only "one" complaint regarding the transfer of medical records. Mills informed McIntyre in their private conversations (not privy to anyone else), that the Cinquegranas had not signed the release forms and that Mills had sent all necessary parties all copies of the immunizations records to afford the children full continuity of care of their children. To then concur that Mills had an " impairment" which resulted in misconduct is not rational, not logical and in complete violation of Mills' due process and equal protection of the law. One need only look at physicians in R.I. that did not release medical records and admitted to such with sanctions of a mere $500.00. In this case Mills contests this allegation in that she was forced with threats of suspension by McIntyre if she did not release records even though she had not received signed consent to do so.

PUBLIC DISSEMINATION BEFORE HEARING

In violation of Mills' right to equal protection of the law and due process, McIntyre made public to the National Practitioner Data Bank (October 1999), Florida Medical Board

(May 2000) to the NPDB again (October 7, 2003) that Mills according to his allegations has a " mental disorder." (See Appendix "Evaluation"). The Board will state that there are no provisions as to when in time the Physician must be presented with the "list"of names of evaluators to complete the mandated evaluation. First Mills contends that there was 1) no probable cause 2) that she was not provided with a list as per R.I. statute 5-37 @ pg 86 (10) " by a physician acceptable to the board from a list provided to the licensee by the board if probable cause exists..." It may not be unambiguous as to the way the statute reads as to time allowed, but the law does state that such proceedings should take place in a meaningful time and manner. The issue as it stands is that McIntyre/Board did not forward a list to Mills for one year. It can only be deemed logical and rational (one with such authority as that of McIntyre would believe that Mills had some " impairment" that was causing her to act unprofessionally), that he would then want to obtain such an evaluation as soon as possible. This was not the case. Mills chose an evaluator from the list as soon as she received it. McIntyre contacted the doctor in writing. McIntyre fabricated and made false allegations to her on October 1, 1999. These were created from private conversations with Mills and from an investigating meeting (no stenographic report). Most egregious of all and in violation of Mills' rights as a citizen was that he wrote to the evaluator that Mills was not to be allowed to see her own mental health records. She would only receive a report from the Board which includes McIntyre clearly in violation of not only Mills' constitutional rights but as it reads in the very same RI Gen Law as above, " .... shall not be released or transferred without written consent of such patient..." 5-37-3-4. The penalties for the release of such confidential health care information do include criminal penalties as per RI Gen Law 5-37.3-9.

When Mills obtained new counsel, John Harwood entered an agreement with McIntyre/Board that Mills would be seen by another Psychiatrist in Massachusetts. The evaluation

was a positive one, was sent directly to McIntyre by Mills' counsel yet McIntyre then reported to the NPDB that Mills had a mental disorder. This violates all Mills' constitutional rights to a fair and just hearing, unjustly deprives Mills of her livelihood and property interest and subjects her to discrimination, as well as humiliation, embarrassment, and the marring of her reputation as a professional and citizen.

DISABILITY OR HARMFUL TO ANYONE

The same RI statute Gen Law 5-37-1.3 (10) reads, " the investigating committee and the board may not discriminate on the basis of disability ...nor subject qualified individuals with disabilities to any discrimination on the basis of disability in its complaint procedure....all decisions of the investigating committee and board shall be on the allegation of unprofessional conduct and not due to probable cause of the conduct being related to the disability of the licensee." It may be defined that an intolerance to noxious vapors as that of gasoline, formaldehyde and chlordane is a " disability." It is not safe for anyone but affects different individuals at differing levels. In September 1999, the only other complainant, Brown reported to McIntyre they believed that Mills' buildings were not so affected but they did not determine or review any sources of information to support their beliefs. It is in violation of Mills' constitutional rights that the Administrative Hearing Officer and the Board/McIntyre denied Mills all supporting evidence and witnesses including R.I. lower court C.A. No. PC 00-229 Attorney General Sheldon Whitehouse v. Speedy Petroleum, Inc to clean up the underground storage tank leaks. This information was submitted to the Board and rebuffed as was all supporting evidence. Mills' doing house calls and not entering the offices due to noxious vapors was to protect herself, her patients and employees. Any conduct and behaviors as reported by the Brown complainant were a direct result of this contamination. By R.I. statute it is in error of law that Mills' property interest be taken from her as a result. Sheldon Whitehouse, later representing McIntyre objected to Appellant's

Writ of Mandamus to Re-Open for supporting evidence which included his very own case against Speedy Petroleum. The Board erred in not presenting any expert in the field of Environmental Safety or Psychiatry in support of their allegations that Mills has a mental disorder. Their only expert Dr Robert Eden, a Pediatrician, had no expertise in either field(testifying to having no knowledge whether there were gasoline vapors in Mills' building and to clearly not being an expert in Psychiatry). Eden based his decision(upheld by Board/ lower court) on the complaint letter of one mother Joyce Brown. Appellant cites, Millerick v. Fascio 120 R.I. 9, 384 A 2d 601 (1978) wherein, medical consultant for agency reached opposite conclusions as to plaintiff's condition basing his findings entirely on report submitted by plaintiff's doctor rather than obtaining an independent physical examination. The court in this case held the only reliable,probative, substantial evidence as to plaintiff's condition was her doctor's report. The court further concluded that the decision which relied solely on the consultant's opposite conclusion was clearly erroneous. Without any independent review of whether Mills' buildings did indeed have contamination, Eden relied solely on the mother's complaint, admitting in testimony, "assuming everything I have been given to be true"clearly erroneous. The Board specifically doubted Appellant's credibility and found "no evidence" that such contamination had occurred but remarkably rebuffed Appellant's offers of the evidence on several dates: at hearing, post hearing, lower court; then went on to find her "incredible"based on the lack of evidence. Appellant testified," Yes" to presenting the monitor reports, attempted to submit C.A. No 00-229, DEM's Compliance Order, xray tank report and testified to the latter (hearsay accepted by Board/court with reference to *69 call so using same logic and rationale Mills' testimony regarding Tom Campbell of DEM and others should be accepted).All of the following issues relate to the violation of Mills' due process rights to a fair and just hearing and equal protection of the law.

REPORTING SUSPICIONS OF CHILD ABUSE (issuance of letters rogatory regarding NEAR SIDS on former patient)

Every citizen of these United States has the right and each state has laws governing the reporting of suspicions of child abuse to the appropriate agency or police. There is a mandate for Physicians to report any suspicion, in particular this includes any suspicion they believe is an injury by non accidental means. There is no time limit imposed on when one may have such a suspicion, in fact many cases go undetected for years. There is a procedure to follow by R.I. Gen Laws 40-11-6 and statute does read in part, " any physician or duly certified registered nurse practitioner has cause to suspect .....abused .....shall report ...to the department as provided in subsection (b). " In (b) An immediate oral report by telephone or otherwise ....shall be followed by a report in writing...."This written report is known as a PRE, requires the Physician to examine the child. Subsection c) report by a person "other than physician or duly certified nurse practitioner."In this case the department(State) shall have the child examined by a " licensed physician" or duly certified NP. The lower court decision @ pg 20, " in addressing questions of statutory interpretation, Supreme Court of R.I. had held that the Court " must literally interpret a clear and unambiguous statute and attribute the plain and ordinary meaning to its words." Justice furthered it was unambiguous that a physician's duty is different than ordinary citizens and physicians are held to a higher duty when reporting cases of suspected abuse. Justice did not address instant case wherein Mills was 1) no longer caring for the two girls(one just 16),2) Mills had been told to cease the practice of medicine,3) Mills made the call from her home and not medical office.Statute as Justice cites does not address these issues unambiguously. Eden, state's expert, was asked what he would do if he suspected abuse but was no longer the treating physician, answering, " this has never happened to me," " I suspect the state would have to do the physical exams." Walter Lambert, M.D.expert in abuse/violence verified for Mills that a call from

a home may be made anonymously even by a physician. Mills held a Pennsylvania license, their statute reading,even for unrestricted licensees, it is not mandatory for Physician to identify themselves.It is without question if Mills were able to examine the children and file a PRE, she would have signed her name.Certainly she did not disguise her voice nor have someone else make the report. However, Mills did fear suspension for the father was a State of R.I. employee for DCYF as child abuse investigator.Without Mills being required to answer the mother's complaint, Mills would not have reviewed illegible old medical records and would have continued to believe the mother's explanations in part due to the father's position. The records from previous doctors were "illegible,"mother alleged all apnea records were "lost in the Navy(father a police officer at Naval base).Further careful review of the old medical records revealed about eighteen (18) injuries to two of four girls in this family and that NEAR SIDS records were not available. It was written in the old medical record by a former Pediatrician, Dr Edward Aspirinio as follows, " the apnea records did not go to Dr Barrett from the US Navy." This is exactly what the mother told Mills, that they were lost and there were no infancy records.(DCYF 18a) It is arbitrary and capricious, in error of law to have prejudiced Mills by alleging she was in violation of this statute.Mills was denied her constitutional right to report a suspicion of child abuse. Mills made her report to DCYF on October 5, 1999. She reported the suspicion of abuse regarding a then 16 year old girl. Her older sister had turned 19 in September and had an equal if not greater amount of injuries to that date including a NEAR SIDS event during infancy. The lower court erred in its omission of the fact that Mills reported the minor (DCYF 26a-28a) stating Mills only reported a patient that had become of age in order to characterize Mills' behavior as unprofessional. The RI Supreme Court December 1, 2003 in Mills v CHILD,INC cited @ pg 3, the agency found that Mills " made a "false" report on " a parent of one patient"(The very day Mills filed her writ in opposition to such allegations).This

denies Mills all rights to due process. It must be a record reviewed and in view of the "reliable, probative, and substantial evidence on the whole record a decision is made. A clearly erroneous decision by the lower court. On September 29, 1999, Joyce Brown mother of these two girls produced a 7 page computer printed document sent urgent to McIntyre. On page 4 it reads, " Bridgeport apnea records missing." Mills, Aspirinio, and Barrett all former doctors caring for these girls were never notified of any Bridgeport records. Mills did not even receive this 7 page document and the knowledge of a " Bridgeport Hospital" until November 11, 1999 when her new counsel (as of November 9, 1999) requested her entire file from the Board. Mills immediately called this hospital and learned from medical records that the NEAR SIDS records on Sarah Brown, then 19 years old, were still on microfiche, not lost in Navy as the mother told three former Pediatricians.

When Mills made the report to DCYF, she had no idea that the mother had already with " intent to harm, malice and ill will, falsely accused Mills of removing the Bridgeport records from the medical charts. The mother had meticulously and laboriously reported to McIntyre finding fault with every entry Mills made into her children's medical records-even those of one child then just 13 years old that had seen Mills only for two sick visits and had never had a well check in over five years. In Memorandum in support of objection of the investigating committee (again signed by McIntyre), it reads, " likewise in this Disciplinary Hearing pertaining to Dr Mills, it appears that all the evidence was available at trial." McIntyre cites, Am.Jur.2d Trial 382 (1991) in which it reads as follows, " The trial court should not reopen a case except for good reasons and in proper showing." The Bridgeport medical records on NEAR SIDS were "not available at trial."

Mills contends that more than good reason exists to reopen for evidence when it involves the welfare, emotional and physical health of a patient. Dr Eden testified that he did not review the Bridgeport records. Dr Carol Jenny a child abuse

expert well known for writing on apnea and its relation to head injuries in infants informed Mills that she did not receive these Bridgeport records when she did " an internal investigation for DCYF," after Mills with counsel requested a meeting with DCYF in July 2001. Dr Jenny informed Mills that it certainly was information that should have been on the record and afforded her. Of importance is that what " led to the temporary/summary suspension of Mills was her call to DCYF" (as per McIntyre). Mills contacted DCYF and was to meet with them July 10, 2001. It was cancelled by DCYF and rescheduled by Mills. After contacting DCYF her final and full suspension was signed by the DOH. As early as May 2000, Dr Randell Alexander Director of Child Abuse at Morehouse Medical Center Atlanta, informed Mills by letter that her call to DCYF was " not out of line," and " not unreasonable, based upon the paucity of regular medical care and the frequency of the injuries." He had agreed to testify for Mills.

McIntyre stated in objection to letters rogatory that it is " improper for Plaintiff to attempt to reopen an administrative matter when the record is closed and Plaintiff litigated this issue on the administrative record. In Lemoine v, Department of Mental Health Retardation & Hospitals, 113 R.I. 285, 320 A.2d 611 (1974), "the statute did not limit authority of superior court to remand administrative appeals to the administrative agency so that more evidence could be taken and agency could reevaluate its decision." It is neither rational nor logical for the lower court to have denied letters rogatory on such an important issue. It further denies Mills her due process and even as a physician caring for these children it was her entitlement to know and be aware of all of their medical history. 1) If the Justice allowed the subpoena of records and there was nothing of harm to the infant noted in them, it would simply bolster their case that Mills had suspected abuse " in error," (though to suspect infers no error). It is controverted between the parties but it is Mills' testimonial that she did not remove, alter or in any way change the medical records that were hand delivered to

her by the mother Joyce Brown. The Bridgeport records were not made available to any of the Pediatricians, one now deceased, the other retired and Mills.(App 18a) In fact, the old medical records hand delivered to Mills reveal that they had been"pasted over and cut to fit," as determined by a handwriting analyst hired by Mills. These altered records were from the Naval Base where the father was employed as a police officer and those of the now deceased physician Barrett (App 30a).

McIntyre in the objection also states, "Plaintiff is seeking childhood treatment records of an emancipated adult without giving proper notice as required by the Confidentiality of Healthcare Information and Communications Act regarding court proceedings 5-37-6.1 and 5-37-6.2 regarding administrative proceedings." Lower court complemented Mills' counsel stating he was a " fine lawyer," specializing in appellate law. On July 23, 2003 he prepared a motion regarding the Bridgeport records and filed a motion for letters rogatory. On August 26,2003 he had a telephone conference with mother Joyce Brown, the same day a telephone conference with Counsel for Brown, James Currier regarding subpoena of the Bridgeport medical records. On August 28th he was present at a court hearing on the letters rogatory, conversed with Board counsel regarding the language of the order, and on September 14 again spoke with Board counsel regarding the same letters rogatory. As early on as January 27, 2003 (Mills' counsel from January 14, 2003) in representation of Mills, Counsel contacted McIntyre regarding the subpoena to Bridgeport Hospital for the NEAR SIDS records. R.I.G.L. 5-37-6.1 reads that the procedure that Mills' counsel took was done with proper notice allowing the twenty days (20) for a motion to quash the subpoena. McIntyre again acted as the " representative," in doing so. The lower court granted the motion to quash denying the " reasonable ground to believe this information sought was relevant to the proceedings and the need for the information clearly outweighs the privacy interest of the individual." The court shall consider (section e) in part:1) the particular purpose

for which the information was collected-in this case to determine if a suspicion of abuse began in infancy and what was the cause of NEAR SIDS event; 2) the individual's reasonable expectation of privacy in the information-in this case if as they allege Mills removed the records then they should not be concerned if the same information is to be released again (Mills did not remove the records nor was Mills ever given these records); and most importantly 4) the effect of the disclosure on the individual's future health care- if in fact there is abuse in the individual's history this can have long term effects;5) the importance of the information to the lawsuit or proceeding- Mills has been accused by the mother on September 29, 1999 of removing these records from the patient's medical chart (Mills did not learn of this until November 11, 1999 over one month after Mills made the report of suspicion of abuse to DCYF) certainly raising the suspicion of abuse.6) The information was not available from any other source, was not presented at the hearing

The NEAR SIDS records have enormous importance as to the proceedings before the Board in that they would determine if in fact the patient was 1) premature 2) had apnea of prematurity or apnea from some other cause as to be a true NEAR SIDS 3) would tell where the actual event occurred which remains in question Ledyard or Bridgeport 4) would determine if the records were ever obtained by any party 5) whether there was abuse resulting in the NEAR SIDS.

It was in violation of Mills' due process and right to a fair and just hearing to deny the inclusion of this information during the hearing, after the hearing but before the final determination while proceedings were still open and at the lower court on November 6, 2003, and to falsely accuse Mills of removing, stealing or taking these records. . No proper and thorough investigation took place as McIntyre stated when contradicting his own witness' testimony, " it was a non-investigation(T pg 64 9/21/00). Steve Brown told his supervisor (his personal friend Ed O'Donnell T pg 66 9/21/00)of only two

injuries(DCYF 26a), testifying, " O'Donnell knows my children too well," as reason the normal procedure of investigation would not take place. Brown testified that all the injuries occurred but he was not asked about each of the specific dates reported by Mills (Tpg 81 9/21/00). DCYF report reads "Browns believe Mills has some paranoia, psychosis or other mental illness (DCYF 27a). Mills once again was denied her due process of law and the agency took at face value the word of Joyce and Steve Brown without the normal course of an investigation. A persons' job description alone does not bar them from being a perpetrator of abuse and especially not their spouse, a friend of the family and other. Even after Mills met with DCYF Dr Jenny admitted that the " internal investigation" did not involve a review of the NEAR SIDS medical records.

Mills has contacted the acting Governor of the State of Connecticut to put a stay on any destruction of those records until such time as the issue becomes moot and/or Mills may be cleared of all false allegations.

CONCEALMENT

When more than one inference is possible a court is not to substitute its judgment for that of the agency unless the findings are clearly erroneous. Guarino v Dept of Social Welfare 122 R.I. 583 410 A.2d 425(1980). The term concealment is known to us even in the insurance industry as a covert way of hiding information necessary to make a proper and legal decision. The scope of the Supreme Court is to determine again by careful and searching review whether there was any legal, competent evidence, or reasonable inference to support the findings of the court. Edge-January, Inc v Pastore 430 A.2d 1063 (R.I. 1981) The Board and court on record have disregarded evidence, improperly weighed evidence, concealed or omitted words from sentences, changed wording as it was testified by both Appellant and Board's own witnesses, rendering the decision arbitrary and capricious (Lake Terrace Property Owners Assn v New Orleans 567 So.2d 69 (La)), at error of law and clearly erroneous. It is without reasonable

inference that Appellant would 1) report to DCYF the injuries "could still be accident prone" if she was retaliating against the family 2) testify that DEM did not confirm to her that there was gasoline contamination in her building when the State DEM was involved since March 1999 in cleaning it up 3) report on an application to RI Hospital that she graduated from two medical schools yet submit letters from the Deans of the two schools to that application both confirming she graduated from one school Ross(application first page states Ross MD 1984)

In fact with concealment, lower court decision reads: 1) Mills herself testified that DEM did not confirm contamination omitting " that existed there for four ½ years." 2) Mills reported to DCYF one patient then 19 years old omitting that Mills reported a 16 year old and then spoke of her sister who had become of age 3) Mills submitted on application to RI Hospital that she was enrolled in a PhD/MD program omitting " 2 yrs" from the PhD/MD 4) Mills testified that she kept the old medical records in her "home" wherein court changed the words as testified -" garage at her house". 5) Mills questioned the 16 year old about whether she used alcohol, cigarettes, drugs, was sexually active, ever depressed or have thoughts of suicide whereby the lower court omitted all but " sexual activity" in its decision

In error of law these and many more changes, omissions by the lower court prejudiced Appellant to create an appearance that she was guilty of unprofessional conduct. The courts defer to credibility determinations that an agency made in reaching conclusions. On the other hand, courts may reject an agency's credibility determination in appropriate cases. NLRB v Payless Cashway Lumber Store, Inc 508 F.2d 24 (8th Cir). Where the credibility determination is irrational Breeden v Weinberger 493 F.2d 1002 (4th Cir) or where the agency has misconstrued it, the court may ignore credibility determinations made by the agency. Robinson v Workmen's Compensation Appeal Bd 589 A.2d 778 (Pa Comm Ct.)

Cinquegrana mother testified that she was not told to

return for a follow up visit to the Cardiologist and that no additional tests were necessary. Cardiology report in medical chart @ pgs 18-19 reads, " follow up visit scheduled for repeat EKG." She testified, " the reason I switched doctors was to get a second opinion." This doctor ordered a head xray certainly additional tests. Mother testified that the xray was ordered on one of if not the first visit to the new doctor. Record below cites the xray was ordered over one year later after many visits.

Brown mother testified it was " bizarre" for Mills to talk about gasoline vapor contamination to her building though the very court records C.A. No. PC 00-229 Sheldon Whitehouse v Speedy Oil Petroleum Inc reveal that this was a very serious health hazard to the entire area surrounding the gas station. In January 2000 (Mills' hearing began August 2000) the very court for which this appeal concerns, approved a consent order finding that the petroleum contamination constituted a public nuisance. Senior Environmental Scientist Peter Sullivan at DEM RI filed an affidavit in that action stating when he visited Mills' office he was "immediately hit by an overwhelming odor of gasoline" (Affidavit para 13 DEM Public record)

Attorney Alexander representing RI Hospital stated at hearing March 31, 1994 " it is on the first page, why would someone say they graduated from two medical schools" (Mills) There is no graduation date for Case;only one school has an MD degree-Ross Jan 1984 (1st page of application App 101a)

Dr John Cronan states RI Hospital does not deal with them FMG's here. (Dr Vincent Armenio graduate of Ross admitted to staff Mills applied to at RIH app 100a)

Dr Robert Eden sole expert witness for Board/Pediatrician testified:1) she was wrong about the possibility of Williams (He did not remember what it was offhand) 2) I would ultimately release records without a consent signature (Violation of RI Gen Law and HIPPA (Federal Law) 3)I do not know if her building has gasoline/hydrocarbons vapors in it- DEM did confirm this 4) I only saw ONE injury in the charts, the old medical records were illegible- there were 18

injuries in the charts.

He repeatedly testified, " assuming all the information given to me is true," when in fact it was not. The Board relied solely on this one expert who based his opinion on 1) assumptions that all he was given was true- information from McIntyre and the two complainant letters both of which were produced in part by McIntyre and because McIntyre, " convinced me he was out to help Dr Mills," and 2) with no independent discovery or questioning.

There must be adequate relevant evidence so that a reasonable person could accept the evidence as sufficient to support the agency's conclusion. Pierce v Underwood 487 US 552, 101 L. Ed 2d 490,108 S. Ct. 2541 Examination of the record as a whole demonstrates that the decision(s) below are characterized by substantial factual errors. They are so numerous and significant as to render the decisions arbitrary and capricious. Where the Supreme Court finds that the agency has drawn improper or irrational inferences from the evidence, the Court will not demur from correcting such errors. Thus where the agency's resolution of factual matters before it is defective and prejudicial, the court may deem it clearly erroneous and reverse. Millerick v Fascio 384 A.2d 601, (R.I. 1978) An agency action may be considered " arbitrary and carpricious" when the agency's explanation for its decision runs so counter to the evidence before the agency that it could not be regarded as the product of agency expertise. Motor Vehicle Manufacturers Assoc. V State Farm Mutual Auto Ins 463 US 29,77 L.Ed. 2d 443,103 S.Ct. 2856

The Supreme Court will reverse factual conclusions of the agency only when they are " completely bereft of competent evidentiary support in the record ." Sartor v Coastal resources Mgt. Council 542 A.2d 1077 R.I. (1988) Not only did the court in the instant case " weigh the evidence," it altered the evidence as the record stands. This is in error of law.

Argument rests on 1) Constitutional questions raised below 2) legal evidence-testimony as it stands below 3)decision

must be made with reasonable inference 4(the whole record must be reviewed by careful and searching inquiry and 5) the decision must be vacated if it is clearly erroneous based upon the reliable, probative, and substantial evidence on the whole record (Eden Brown and Cinquegrana testimony) Liberty Mutual Ins Co vs Janes, 586 A.2d 536 (R.I. 1991).

The court cannot base its decision on concealment, altered testimony (using words other than those testified to which may not bear the same meaning to any reasonable person.

The United States Supreme Court affirmed the exhaustion of administrative remedies will not be required where to do so would be futile (Anthony Palazzolo, Petitioner v. Rhode Island et al No. 99-2047,2001 U.S. LEXIS 4910June 28,2001). The case of Mills vs Bruce McIntyre filed March 1, 2001 to avoid this situation has not yet been heard on appeal in the very same RI Supreme Court. One component the APA's "ripeness test," is that any adverse effects flowing from the agency's determination must be felt concretely by the party seeking judicial review (Appendix-Sanctions). This applies in the instant case.

The seven counts of unprofessional conduct alleged by the Board/lower court will be addressed in each of the above categories. The counts are so addressed in the Appendix and are as follows: 1) DCYF complaint (see appendix and argument) 2) Treatment Outdoors, 3) Williams Syndrome, 4) Record Transfer Issue (appendix and argument, 5) Evaluation issue (appendix and argument) and 6) Rhode Island Hospital application.

THE DECISION BELOW CONFLICTS WITH THIS COURTS PRECEDENTS

The petition for certiorari shows the decision below conflicts with this Court's Fourteenth Amendment precedents. A review of the whole record is so "shockingly wrong" and thus presents due process questions. Physicians have a vested interest in their careers and should be afforded fair and constitutional hearings. Prohibiting all forms of supporting

evidence and witnesses violates fundamental concepts of fairness and justice. This case is not unique since the HCQIA Act of 1986 which gave great leeway to Boards of Medicine for peer reviews. Instituted to maintain and improve the quality of health care, cases of abuse of powers and medical sham reviews have been on the increase. This is a question of national concern. In the instant case it is not just an argument of erroneous decisions below, though the record is so replete but that all procedural requirements were in violation, and all fundamental rights of due process denied Appellant. One is left to only wonder what the real agenda or motive was for the sequence of events in the instant case. Appellant was building a large and successful medical practice when she was shut down. A former superior personally kept her off staff on at least one hospital while renewing her credentials at the one where he was Chief of Pediatrics. This Court has ruled in the case of Patrick v Burgett 486 US 94,108 S. Ct. 1658, that state officials do not have the exercise of power to review private parties particular anti competitive acts and to disapprove those that fail to accord with state policy. The decision further stated there has been no showing that State Health Departments, Boards of Medicine or even State Judiciary systems even could review private decisions to correct abuses.

CONCLUSION

Appellant requests that this Honorable U.S. Supreme Court exercise its supervisory powers to correct this injustice by granting her writ of certiorari for review and reversal of the lower court's decision to deny her an appeal on her license to practice medicine.

Respectfully submitted,

Geraldine Mills, M.D. Prose
191 Squantum Drive
Warwick, Rhode Island 02888
401-463-8433

APPENDIX

Former RI State Supreme Court Justice Robert G. Flanders resigned August 2004. On October 13, 2004, in a meeting to honor him, he was quoted, " I found I could only say 'I respectfully dissent' so many times before the thin veneer of 'respectfully' began to erode and wear away." He then stated he could no longer serve a court that made so many bad decisions. " We have a history of all sorts of bigotry and discriminatory and illegal and corrupt behavior," he furthered.

This describes the instant case as best as it can be said. Bruce W. McIntyre, counsel for the RI Medical Board stated, "Attorneys have a unique responsibility to see that justice be done and not to try to dictate outcomes. I apologize for that." This was just one example wherein McIntyre influenced the Hearing panel. (T pg 71 Aug 23, 2000) McIntyre was asking Steve Brown State of RI child abuse investigator if he had any personal knowledge of Mills ever filing any reports with DCYF other than the one on his own family, whether he ever saw Mills in the DCYF office, and if he ever worked with Mills on a case. (Mills had been to the office, spoken directly to Ed O'Donnell on a suspicion of sexual abuse in a two year old and was turned away from the office). Ed O'Donnell was Steve Brown's supervisor and personal friend,(See DCYF) who also did a " non-investigation" on the Brown family.

Not only did McIntyre dictate the outcomes, he created situations and fabricated variations of other actual events in order to dictate the outcomes. At the outset of the Hearing, Mills' counsel had to rebut to this as follows: " .....there were not multiple complaints but one sine qua non complaint....so these references to multiple complaints are not before the Board and shouldn't be....because the Board's own rules and regulations require the complaints that are received be transmitted directly to the licensee once they are received, and that didn't happen in this case, so this illusion that there were

multiple complaints upon which the Board acted is inappropriate and improper in these circumstances. The Board has a procedure to follow. If the Board didn't follow it, this hearing panel shouldn't be allowed to imagine what facts may have existed because the Board undertook or believed that there were multiple complaints.....Some of the correspondence in this case refers to it as a psychological evaluation, and yet when the Board was asked to furnish a list of psychiatrists to conduct it they didn't do so until September 21, 1999...The facts of this case will show very clearly that Dr Mills' license should not have been suspended...will show that Dr Mills complied strictly with the letter of the law....." (Exhibits A,B,C)

INVESTIGATORY, ADJUDICATORY ,and ADVISORY

In argument, tenure and concurrent multiple positions held by Bruce McIntyre were presented. The following is a partial list (as cited in record below in supplemental brief and in brief to lower court @ pg 2) of violations of both RI Gen Laws and the Administrative Procedures Act (APA) as well as the Rules and Regulations of the Medical Board. First are several more examples of directly influencing the Hearing Panel: 1) by aiding the mother in altering her original handwritten complaint (T pg 16 October 5, 2000 Cinquegrana) " And did you come in here and prepare that affidavit?" " No, they asked me to write it out...." " Okay, " did you write that out?" "Yes." " In longhand?" " Yes, I wrote it out." " At some point in time did you then receive a typewritten affidavit?" " Yes." " Where did you receive that from?" " Now, I can't remember." She later remembers it was from the, " gentleman in the red tie." The hearing officer states, " let the record reflect that is Bruce McIntyre." The mother testified that she discussed in detail the matters with McIntyre and then " they" typed the affidavit and had her sign it. The Hearing panel got to hear matters that were not part of Cinquegrana's written complaint to the Board (see violation of RIGL and Rules and Regs)Dr Milton Hamolsky former

Acting Chief Administrative Officer of the RI Medical Board is quoted in the Spring 1994 Medical Board Bulletin, " When the Board receives an allegation.....(.in writing and signed).... The Board.....determines the " opening" of an investigation. If the case is opened, the unaltered allegation is forwarded to the physician, after five days for reflection .....with a request for a response within 14 days in writing with any supporting documentation."(see Violations) 2) McIntyre asks, " You put Yale and Brown on your resume didn't you?" (Mills was rebuffed with her attempt to submit her CV which has no Yale or Brown internship or residency listed on it), leaving the Hearing panel with an " illusion" and to " imagine what facts may have existed." This brings one to the first of the violations: 1) Duties of the AHO (Administrative Hearing Officer) shall include 1-7 @ 6, ".....to ensure evidence sufficient to determine the facts are on the record" (pg 15 APA) 2) RIGL 5-37 (1.3)2 and 5-37-5.2 " All complaints are to be forwarded to Physician in unaltered form" and " Investigations shall remain confidential and all initial...and full hearings before the Board shall remain confidential ...The Board shall make public all decisions...all conclusions (after due deliberation only)" also in violation was 5-37-6.3 in which public dissemination occurred prior to conclusion of fact and law 3) 5-37 1.3 (10) " The Board has the authority to require any physician undergo a physical and psychiatric evaluation ...by a physician acceptable to the Board from a list provided to the licensee by the Board is probable cause exists to believe that allegations of misconduct against a licensee are caused by an impairment which has directly affected the ability of the licensee to conduct his/.her practice professionally." 4) 5-371.5 Immunity " shall be immune.... performed in good faith..." "Provided the report, testimony....was made in good faith." 5) 5-37-5.3 Specification of charges-" When the Board determines...a copy shall be served upon the accused, together with notice of the hearing as provided in 5-37-5.4 6) 5-37-8 and Rules and

regs # 9 14 110 001-16 read, " within ten (10) days of receipt of notice for a hearing a witness list and specification of charges should be made available to the physician 7) Rules and regs 14 110 -001-15 #8 Institution and Notice of Hearing " the hearing shall be no more than 60 days and no less than 30 days after service of charges upon the Physician and shall include the list of witnesses and specify the charges; a December 2nd hearing was scheduled 10 days after notice of specified charges and no witness list was made until December 10, 1999 (revised January 24, 2000) 8)5-37 2.1 (10) consent order did not read " as promised." It read that Mills refused to see the psychiatrist for a year. Mills was not given the names for eleven months after receiving notice from McIntyre September 29, 1998. (Evaluation) 9) 5-37-3-4 Medical release laws: ".... confidential health care information shall not be released..... without the written consent of such patient or his or her authorized representative, on a consent form meeting the requirements of subsection (d).....(3) Any person who knowingly and intentionally violates the provisions of this section shall upon conviction, be fined not more than five thousand ($5000) dollars for each violation or imprisoned not more than six(6) months for each violation, or both.

As stated, this is just a partial list of the violations by the Board, in specific McIntyre.

HISTORY

In Statement of the Case some of the background of this case was reviewed. In order to fully understand what McIntyre did to orchestrate and manipulate the course of events, and perhaps why, is the following: Mills was an employee of a community hospital, St Joseph Hospital with two units, one in South Providence, the other in North Providence. Mills medically cared for clinic patients in the South Unit and attended all risk deliveries, admitted children to the ward, and saw patients in the Emergency Room (at the Er's request) at the North Unit. She was employed as such

from 1989 until July 1, 1993. Mills was placed on the December 1992 call schedule by Toselli, to work just about one hundred hours at the hospital the week of December 16, 1992. This included Wednesday morning 7:30 AM until Thursday at 5 PM to return Friday morning 7:30 AM to work straight until Sunday at 8AM staying at the hospital at all times. Mills was contracted to work for 45 hours per week, had on her own done call nights for a time on both Tuesday and Friday nights. The rest of the call nights were done by Resident doctors in training from the Hasbro Children's Hospital. During weeks in December 1992 these residents could not fulfill this service at the community hospital thereby leaving only Mills and another Pediatric House Officer to do so. The other HO rarely took call nights. Mills tried to explain that 48 hours after 36 hours was not only unsafe for her patients but for her as well. Toselli immediately informed(in not so pleasant a manner) Mills that her contract would not be renewed for her fifth year of employment at the hospital.

In July 2002 all interns at U.S. hospitals are no longer allowed to do more than 24 hour shifts in patient care. In a study by Dr Charles A. Czeisler at Brigham &Women's Hospital, the hours in Internal Medicine have been limited to 18 per shift.

Mills left St Joseph Hospital with a record according to the Department of Labor and Training, State of Rhode Island with " no misconduct," in the four years of her work. Senior VP Mark Hough wrote that Mills, " gave quality care to her patients, " and Toselli on two occasions wrote to the Massachusetts Board that Mills was " good" in all her qualifications. Mills received letters of recommendation from the charge nurses, ER physicians, private Pediatricians on staff, specialists but not one from Toselli. On March 31, 1994, as we have seen, Toselli was to have slandered Mills to the RI Hospital. Since St Joseph did not have a Pediatric ICU it was important for Mills to obtain privileges there when necessary

to admit her patients for higher risk care. Toselli " personally kept Mills off staff at RI Hospital" but credentialed her each year to be on staff at St Joseph. This was not rational or logical unless it meant that anti competitive behavior or politics was involved. He is quoted to have said, " she is incapable of the job." This was not a rational statement for he had her working unsupervised over 100 hours per week. Mills got a 4 to 2 vote of denial for Pediatric privileges at RI Hospital with Frank DeLuca, M.D. abstaining (Pediatric surgeon who personally knew Betty Coryllos M.D. who recommended Mills highly). Dr Richard Greco recently told Mills he voted for her to be on staff because, " I found no reason whatsoever for you not to be and I believe Dr Passero felt the same way."

Dr Cronan not only discriminated against Mills for being a graduate of Ross Medical School but he altered letters of recommendation in support of Mills (those very letters Dr Toselli testified at deposition showed Mills as " highly recommended"). Elizabeth Coryllos, M.D. wrote on March 15, 1994, " I have known Geraldine Mills, M.D. for seven years. I worked with her extensively as both her attending physician and preceptor.....I was very much impressed with her knowledge, enthusiasm, ability to follow through on projects and endeavors. Geraldine always got along well with patients, and their families....." Dr Mills is honest, completely ethical, hardworking, intelligent, well-trained, compassionate and efficient.....Dr Cronan took this evaluation and stated at the hearing on March 31, 1994, " last evening (meaning he called Dr Coryllos the night before the hearing) evening she spoke with me and we discussed this and she said she worked with you in a VERY SMALL AREA." Dr Coryllos wrote, " Dr Geraldine Mills worked with me in Pediatric Surgery as a pediatric resident liason. She did an excellent job. We have always had a LARGE AND ACTIVE pediatric surgery service....." Dr Coryllos told Mills that Dr Cronan " misquoted her." Dr Terrence Stull

Acting Chairman Department of Pediatrics Medical College of Pennsylvania wrote of Mills March 11, 1994, " My experience was that she rendered very good care to her patients. My experience in supervising Dr Mills indicated that she had a straightforward insightful approach to patient problems which was supported by the literature." Dr Cronan is quoted from the hearing as stating, " I did call Dr Stull myself. He thought you did a wonderful job. He also described you as somewhat erratic in you approach. He stated you had an erratic personality ....."Again Dr Stull told Mills he was " misquoted." Lastly, Dr Philip Carling wrote that Mills took a 1 ½ week leave of absence which was made up for by deleting time from her vacations. Dr Cronan stated at the hearing, "...after we called Carney Hsopital there was significant issues there. She had been suspended."
Dr Carling also told Mills he was " misquoted" and sent another letter to Dr Mills dated May 6, 1994 which reads in part "The leave (of absence) was not a suspension."

Dr Mills dropped her claim against Dr Cronan and was to receive an "apology letter" from him as per her counsel. The letter was not forwarded to Mill until March 28, 2000 even though the letter has a date of September 1996 on it, no letterhead, and the day in September is written in "30" rather than typed as the rest of the letter. The last line reads, " I did not intend to cause you any harm." /s/ John J. Cronan, M.D. Not only were these evaluations of Mills altered, the testimony of her four witness mothers was removed from the file as well as the recommendation letter of the Senior VP Mark Hough of St Joseph Hospital. Kerri Voisinet, Darlene Barre past president of the Providence Chapter of Foster Parents, Cynara Houtchens and a grandparent of one of Mills' patients all testified on her behalf.

When Dr Mills was leaving the Hearing, Dr Cronan handed Mills a booklet titled, " The Disruptive Physician." Mills had completed four years of work at St Joseph Hospital with " no misconduct", as written by the Department of Labor

and Training, information relayed to them by Administration of the hospital. It is only of interest to note that about the time Mills dropped her claim against Dr Cronan in early October 1996, he was the subject of a private criminal assault complaint by his wife whom he had evicted from their home just weeks before.[The record now reveals " Cronan 48, head of radiology at Rhode Island Hospital and Brown University's School of Medicine (and part owner of Rhode Island Medical Imaging) was found guilty by Justice Fortunato in September 1998 of domestic assault and given a one-year suspended sentence." The judge said the doctor had not been candid in testimony he gave during the trial and had unfairly portrayed his wife as " such an erratic psychiatrically impaired person that she could not remember things"such as being beaten by him.] as reported in March 1999 Providence Journal News. It is of interest that the words he used to describe his wife were the very same used in the slander of Mills. Mills was not afforded due process as far back as 1994 in that hearing. It is of grave concern that a Physician with such a personal history would be making judgments about the conduct of other physicians while committing acts of violence during the same period of time.

Mills filed in 1995 against Cronan for the slander and unable to believe that Toselli was any party to it (In deposition May 18, 2000 Toselli admitted his part) but dropped the suit in October 1996. Those very years, Mills began receiving calls from Bruce W. McIntyre at the Medical Board. In January 1995 a new patient of Mills, a 2 year old had fallen from a window, was admitted to Kent Hospital in Warwick, R.I. (Mills' home and office in Warwick). Mills had applied for privileges to Kent but in spite of having thirty recommendation letters in the application she was never allowed a hearing (in violation of their own by laws), never was formally denied. Mills was not told of the admission and her cousin Dr Keith Ronald Mills' name was put on the ER sheet as the attending for the child. Dr K R Mills has never

practiced medicine in Rhode Island. McIntyre contacted Mills at her office and threatened her with a full investigation for her not reporting the child to DCYF even though Mills was never contacted about the admission. Neither the ER physician that saw and admitted the child or the doctors that cared for her for over two weeks while admitted contacted DCYF. McIntyre brought Mills before the Board on October 23, 1996 the very month Mills dropped suit against Dr Cronan.

Mills sent in her renewal application for her license with a $200 check on October 24, 1997. It was returned by the Board November 8, 1997. The check was dated 10/24/97 but the actual application was dated as 10/ /97. Mills had left out the "24." Mills immediately corrected this and mailed it back that very day. On January 8, 1997 Jacqueline Landry of theBoard contacted Mills at her home stating, " your license has been suspended." Mills thought the call was about her driver's license. The Board then told Mills the check had bounced. Mills contacted the back and funds were still available. It was determined that someone had denied the check due to the " G" in Mills' name not appearing like that of her signature. However, every check prior and since has the very same " G." The denied check had two dates of deposit on the back unlike all other checks. The bank prepared three letters of apology before the Medical Boa.d would accept them and Mills was told she could only pay with a money order or cash, though the funds were available in the account. The bank had no explanation as to why this happened.

September 29, 1998 Mills received the letter from McIntyre requiring Mills be " evaluated" due to " multiple complaints," though she had not received any. October 15 1998 Mills received the first complaint typed on Board stationary- that of Cinquegrana.

McIntyre contacted Mills at her office on several occasions as the morning of October 9, 1998 telling Mills he was " going to get her," and that she was " aggressive and could not handle things." The only way to remove Mills from

practice and to permanently destroy her business was to create the problems (call group already addressed) within those entities which supported the core of Mills' business.

C.H.I.L.D.,Inc is a day care located in Warwick R.I. near Mills' business to which many of Mills' patients attended. Mills had a practice 95% welfare and low income. On September 30, 1998, Yom Kippur day, Mills received many calls to her office from parents of her patients stating that employees of the day care had informed them to find a new Pediatrician. On October 1, 1998, when Mills returned from her Religious Holiday, she heard the messages and contacted her brother Attorney Stephen Mills. He contacted the day care Director Karen Stanley who informed him that according to her conversation with McIntyre, " something is in the works for Dr Mills to lose her license."(Exhibit D App)

The case is Mills vs C.H.I.L.D.,Inc and was brought because of the statement above and the false allegations that Mills did not release medical records when they were requested. In deposition the Director admits to not knowing of any medical records that were not released by Mills. Stanley did contact McIntyre making a " verbal" complaint to him about the release of medical records as so alleged. Because she did not make a written complaint, McIntyre in the case of Mills v C.H.I.L.D., Inc submitted an affidavit (in violation of law after discovery had closed) stating that Stanley's call had nothing to do with the suspension of Mills' medical license. Yet the letter McIntyre wrote to Mills required she undergo an evaluation for the " multiple complaints regarding the transfer of medical records." It is believed that this was the complaint of Karen Stanley and that the Cinquegranas had changed their day care to that of CHILD, Inc. Mills was denied all discovery in the case and in her license case the father only testified to the name of the day care they had left, Jack and Jill. The Cinquegranas made a verbal request for medical records on August 17, 1998. Mills sent them releases on September 4, 1998 but never received them back. The RIGL allows thirty

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days (30) from the time of receipt of written request to release records. On September 11, 1998 the mother had already reported Mills to the Medical Board refusing for some agenda to not sign the medical release forms and called Mills using these exact words, " You are preventing the continuity of care of my children." Though Mills informed McIntyre the releases were not signed, that she had called all immunizations to the succeeding doctor and answered the day care's request for same, he chose to require Mills undergo psychiatric evaluation, rather than request signatures on release forms from the parent(s). The very day Mills informed the succeeding doctor of the need for the signatures, McIntyre as Notary Public, had the father sign an affidavit that he had already signed the release. Mills was not served this affidavit. This affidavit completely contradicted the original handwritten complaint of the mother.

McIntyre wrote the witness lists without ever speaking to the physicians, stating they would all testify to Mills being " aggressive and threatening," spoke to the day care director, aided the mother in altering her complaint to not include anything about release forms. He delayed the Hearing to discover new evidence against Mills and began going to the doctors' offices (those he put on his witness lists) in the hopes of finding one that would testify against Mills- none did. He then " convinced" (mother's own words) the only other complainant mother Joyce Brown to write a letter. He then told the Hearing panel that Mills " retaliated against" the Brown family, that as he decided, could not have been suspected of abuse because the father was a RI State child abuse investigator.

McIntyre was a witness to each and every event that has led to the taking of Mills' property interest in violation of her constitutional rights.

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APPENDIX EXHIBITS

EXHIBIT A.....R.I. Gen Laws 5-37-1.3(10)

" to require a licensee to undergo a physical or psychiatric examination by a physician acceptable to the board from a LIST provided to the licensee by the board, IF probable cause exists to believe that allegations of misconduct against a licensee are caused by an impairment which has directly affected the ability of the licensee to conduct his/her practice professionally."

DEPARTMENT OF HEALTH
September 21, 1999
Re: Geraldine Mills, M.D.
Dear Mr. Bowerman:
Thank you for the reminder regarding the list of names of psychiatrists who will meet the Board of Medical Licensure and Discipline's requirements for a psychological esamination required by the Board.....
Very truly yours,
/s/ Bruce W. McIntyre

September 21, 1999
Dear Dr Mills:

Attorney McIntyre contacted me today to.....I reminded Mr McIntyre that the Board had failed to submit a list of psychiatrists when they proposed Jeffrey Hunt, M.D. I am faxing you his response which I received today.
/s/ Seth Bowerman

June 30, 1999
Dear Dr Mills:

The Board of Medical Licensure and Discipline has requested that you submit to a psychiatric examination by Jeffrey Hunt, M.D. I do not know Dr Hunt. .....
/s/ Seth Bowerman
(Mills did contact Dr Hunt- he is a child Psychiatrist)

Leah Oseas Cullen, M.D.

Bruce McIntyre, General Counsel
October 21, 1999
Re: Geraldine Mills, M.D.
Case No: 98-187
Dear Mr McIntyre:

As per your request, please find below the summary of .....This office was contacted by you on Tuesday September 21, 1999 with the request that this writer agree to be part of a list of psychiatrists willing to evaluate Dr Mills on behalf of the RI Board of Medical Licensure and Discipline. Later that day Dr Mills called asking for an appointment within the next 72 hours because she was flying out of state that weekend....Dr Mills was informed that the earliest she could be seen by this office was the week of October 3rd. She initially decided to call other psychiatrists on the list to see if she could be seen sooner... Mills called back later that day stating she had decided to set up her evaluation with us because this was the only psychiatrist's office that had returned her phone call .....Prior to the October 5th appointment (records regarding this case were hand delivered to this office and a discussion of the Board of Licensure and Discipline's concerns was held between this writer and yourself.....
/s/ Leah Oseas Cullen

September 1, 2000
Re: Geraldine Mills, M.D.
Dear Mr Foster:
I am in receipt of your letter dated 28 August 2000.....I agreed to stipulate to the date when the board gave Dr Mills attorney a list of physicians from which an evaluation was to be done. The date of September 21, 1999 is correct. .....
/s/Bruce McIntyre
(Mr McIntyre stated Mills refused to get an evaluation so that

is why she did not get a list of evaluators until much later. McIntyre did give Mills one name June 30, 1999 but he was a child Psychiatrist. This was only one name, not a list and was 10 months after his request Mills be evaluated . Mills constantly requested names so this ordeal would end. Mills contacted Dr Cullen the very day the list was given to her requesting an appointment as soon as possible. Mills did contact other psychiatrists names from the list of four on September 21, 1999. It is false that Mills did not get any calls back from the others. Dr Iris Shuey refused to get involved in the politics of the situation since it was a very litigious situation as she described it. In fact, Dr Cullen told Mills, " it does not matter that you cannot be seen until October, the politics of the situation is going to keep you out of work a very long time. There were just 4 names one of them again being Dr Hunt who had already been contacted in June).

EXHIBIT B
State of Rhode Island and Providence Plantations
Department of Health
September 25, 1998
Re: Board Order
Dear Dr Mills:

The Board of Medical Licensure and Discipline has considered past and recent issues regarding your interaction with patients. Your continued difficulty in making arrangements for continuity of care when patients advise you of their desire to transfer care and your repeated violations of the medical practice act involving medical record requests by patients and subsequent treating physicians are of concern. Accordingly, the Board has elected to utilize the law, which permits the Board to mandate an evaluation of you.
You are hereby notified that you must contact this office upon receipt of this letter in order to facilitate this evaluation.
Sincerely,
/s/Bruce McIntyre

General Counsel
(mailed on 9/28/98 but in lower right corner is a certified receipt with " sent out 9-25-98")

KAREN STANLEY DEPOSITION 8/15/00
PGS 21-22
Q. Were there ever any individuals whose records you tried to obtain from Dr Mills that you were not able to obtain, to the best of your knowledge?
A. To the best of my knowledge, I can't think of any.
(Day cares, in particular CHILD INC, do not obtain full medical records on any patients. They either send the physician a form (CHILD INC forms) or have the parent(s) bring them to the doctors to be filled out. It is a one page form asking for immunizations dates, lead levels a blood test result for sugar and protein, a urinalysis and asks whether the child is anemic. There may be a section to write in any health problems) Mills filled out each and every request by CHILD INC, even having brought some to the day care herself when parents could not do so in the 24 hour notice given by the day care)

EXHIBIT C
February 10, 1999
In Re: Geraldine Mills, M.D.
Dear Mr McIntyre:
Section 5-37-1.3 (10) provides that the board may require a physician to undergo a physical or psychiatric examination..... The only allegations of misconduct that I am aware of are contained in the affidavit of Deborah Cinquegrana. You have alluded to me that there have been other problems with respect to Dr Mills. I am not, however, aware of any other " allegations of misconduct." If other complaints of professional misconduct have been filed which in any way constitute the basis for the board's demand for an examination, I request copies be provided to me immediately. If I do not receive

them by February 12, 1999, I will assume that the SOLE basis for the board's demand for an examination are the facts and allegations set forth in the Cinquegrana affidavits.

Very truly yours,
/s/ Seth E. Bowerman

DEPARTMENT OF EMPLOYMENT AND TRAINING
NOTICE OF DECISION
July 14, 1993
Geraldine Mills, M.D.

St Joseph's Hospital
Name of Employer
The claimant was terminated when her contract was not renewed.
The issues is whether or not the claimant is subject to disqualification under the provisions of Section 28-44-18 of the R.I. Employment Security Act.
This separation is considered to be under non-disqualifying circumstances as there is no evidence of misconduct on the part of the claimant.
Benefits are allowed....
/s/ Mary F. Mazza
Authorized Representative of the Director

EXHIBIT D APPENDIX
State of Rhode Island
Kent Sc. Superior Court
CANO: K99-753

Geraldine Mills, M.D.
vs
CHILD,Inc

Affidavit of Stephen Mills

Now comes you affiant, Stephen Mills and having been duly sworn does hereby depose and state:.....

On or about October 1, 1998 I called Karen Stanley at C.H.I.LD, Inc.....I called in my capacity as the brother of Geraldine Mills, M.D., not as her attorney. .Karen Stanley said words to the effect that something was in the works for my sister to lose her license.
SO ATTESTED /s/Stephen Henry Mills

The lower court cited in its decision -standard of review @ 17, " the court's review of a decision by the Department of Health is controlled by R.I. Gen Laws 1956 42-35-15(g). It states that the court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are 1) in violation of constitutional or statutory provisions, 2) in excess of the statutory authority of
the agency 3) made upon unlawful procedure 4) affected by other error or law 5) clearly erroneous on the whole record or 6) arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

The seven counts of unprofessional conduct alleged by the Board/lower court will be addressed in each of the above categories. The counts are so addressed in the Appendix and are as follows: 1) DCYF complaint (see appendix and argument) 2) Treatment Outdoors, 3) Williams Syndrome, 4) Record Transfer Issue (appendix and argument, 5) Evaluation issue (appendix and argument) and 6) Rhode Island Hospital application.

1) DCYF complaint

Mills' summary suspension read, " harassed a father at his place of work." McIntyre stated what, " led to her temporary suspension was her call to DCYF." (This call did not lead to Mills' suspension. McIntyre used this as an excuse to suspend Mills but he knew prior to October 1, 1998 when he spoke to

the day care director of CHILD,Inc telling her, " something is in the works for Mills to lose her license."(Exhibit C)

Complainant Joyce Brown wrote a 7 page urgent document to McIntyre September 29, 1999. She wrote @ pg 4, " Bridgeport apnea records missing." (from Sarah's medical chart) Prior to Mills' call to DCYF on October 5, 1999, the mother had falsely accused Mills of "removing or stealing" these Bridgeport records. (Again, the call to DCYF was not what led to Mills' temporary suspension). It was to happen anyway. In Sarah's medical chart @ page 40 the progress note of Dr Edward Aspirinio reads, " no apnea records to Dr Barrett from the US Navy." No physician caring for Sarah was ever given these records nor did any physician even know where the records were because the mother told us all, " they were lost in the navy," because we moved around a lot."

Mills' call could not be considered retaliation for the " ill will" displayed by the mother in her 7 page critical review of every statement written by Mills in her daughters' medical charts. Mills did not learn this letter existed until November 11, 1999. Upon receipt of her entire file from the Board, Mills learning of a Bridgeport Hospital, immediately called medical records and was told the apnea or NEAR SIDS records were still on microfiche. Mills' suspicions of abuse were heightened with this knowledge and more so after each story by the mother proved false. Recently in small claims court this mother testified that she " did not pay all of her copays at the time of the visit to Dr Mills." In the 7 page document she wrote to McIntyre that she " always" paid all her copays at the time of the visit. When asked if she had a $ 35.00 copay she stated "No." When asked, " then you did not pay all your copays at the time of the visit," she agreed she did not. When asked it she was untruthful when writing this to McIntyre, she testified, " I wouldn't call it untruthful." It is very clear that this mother is unable to determine what is truthful and what is not.

To call it a retaliatory call to DCYF was deemed so by McIntyre upon unlawful procedure. No hearing took place

before Mills was so accused at which she could confront her accusers. It violates constitutional or statutory provisions. The only expert witness for the Board, Dr Robert Eden, a Pediatrician employed by RI Hospital (Eden), later testified at the Hearing, if one believed the injuries were not of accidental means they had to report it. The lower court De read that according to Eden, the physician should consult patient's record thoroughly, contact past treating physicians, past treating hospitals before contacting the appropriate agency. In this case, past treating physicians were one deceased, other retired (not available), Mills did consult past treating hospitals (Kent) and investigation did lead her to believe there was a suspicion of abuse. A report of a skull fracture on the girl (sixteen when Mills made report) from Kent Hospital revealed that the injury occurred from a bunk bed and not from a chair as Mills had been informed. The Kent records revealed these two girls (one not yet " emancipated") had an unnecessary frequent amount of tetanus shots (often four months apart) at each ER visit for each injury.

Lower court's De read, Eden testified, " based on the records there was no reason for Mills to suspect abuse was occurring." Eden stated he saw only "one" injury in the medical charts, that the old medical records were for the most part illegible, that he could make his evaluation of these records because there was enough that he could read. Eden failed to see there were a minimum of seventeen (17) more injuries in those old records. He testified if he knew that they all did occur and the physician believed they were non accidental then they would have to be reported. (T pg 82 October 19, 2000).Eden said if the Physician were no longer the treating physician, could not produce a PRE (written statement as was the case of Mills having been told to cease practice and no longer caring for the Brown children), it would be the State that would have to ultimately examine the children. (T pg 10/19/00).(Argument) (Statute R.I.G.L. 40-11-6 DCYF Exhibit A)(Exhibit H)

Mills was barred from having expert witness Randell

Alexander, M.D., PhD of Morehouse Medical Center support her. In his affidavit of 5-1-00, he writes" Many children of their age would have suffered none of these injuries, some children a few of these injuries, but it would be rare to find two children in a family with so many injuries....." (DCYF Exhibit B) Mills denied his affidavit or testimony, was further denied her constitutional rights when this family was protected from the usual procedures of investigating suspicions of child abuse- wherein the children would be examined (Eden testified, " ultimately by the State). When, in time, an individual suspects abuse should not deter an agency from their normal course of procedure. Rather than this normal course, the record below reads with parents testifying,"Ed O'Donnell knows our children too well" so there was no investigation. (T pg 66 September 21,2000) The DCYF under supervision of Ed O'Donnell wrote in their final report defamatory statements " as told by the Browns" rather than investigate as per normal procedures. (DCYF final report Exhibit C). Though Steve Brown testified that there was a " non investigation," (T pg 80 9/21/00)the decision by the Board reads, the parents were "thoroughly investigated (pg 8 ADe July 11, 2001). On this very page 8 AD, the Board wrote, " she became hysterical in the conversation screaming at the parent." However, Steve Brown, the Board's own witness testified, " she was " courteous," (T pg 85 9/21/00). The lower court in error concluded that Mills' call to DCYF constituted " unprofessional conduct," for the following (as one reason): @ pg 19 Decision (De) reads, " the Appellant began calling their home and harassing them." The Board and lower court arrived at this erroneous conclusion after Mills testified she called the day she received the complaint on September 16, 1999. The father was not home so Mills left a message with Erin to have him call Mills. The father called Mills to her office at 3:45 pm but Mills was doing house calls (unable to use the office). Mills retrieved her calls from the office at her home and called the father back at 8 pm. After this ONE call to the father Mills never called again.

Even after the Browns submitted a complaint against Mills she remained courteous to the family as the father testified. The mother testified that Mills had made 50-60 hang up calls to their home including one just the day before she testified (one year after the complaint). The father testified, " I don't know, I get hang ups. I have no idea if it is Mills." (T pg 63 9/21/00) Yet the mother testified she knew it was Mills and based her belief on the one phone call that was * 69 by her then fifteen year old daughter Erin. (Treatment Outdoors pg 37a) Again the parents contradicted themselves in testimony as to what Erin had told them regarding her *69 of one phone call. Mr Brown was a former Police officer for the US Govt @ Newport Naval Base and certainly had he been receiving 50-60 hang up calls for over one year he would know how to trace them. (see Hearsay)

The Board erroneously concluded Mills was hysterical and screaming at the father, and that the family was thoroughly investigated for child abuse. Though the Board's findings as to credibility of their own witnesses must not be substituted by the lower court, the court can and should reverse or modify the decision because Mills' substantial rights have been prejudiced The Administrative findings, inferences, conclusions and decisions are erroneous in view of the reliable, probative, and substantial evidence on the whole record (even with Mills barred from having any witnesses and any supporting evidence).

Substantial evidence on the record includes 1) the apnea records were never in the girl's old medical records hand delivered to Mills by the mother 2) these records now known to be Bridgeport records are on microfiche at the hospital and not " lost in the Navy," 3) there are now 29 known injuries and one needs to carefully review the illegible writing of the former doctors, 4) tetanus shots were given too frequently, 5) one girl did not have a well check in 5 years and the other older girls had spotty regular care, 6) the father mentioned only two injuries when questioned by his supervisor Ed O'Donnell (who had a domestic violence charge in July 1998)(DCYF Exhibit

D) 7) the father was previously in Navy, 8) in 1997 Erin (girl with history of a skull fracture from bunk bed fall and epilepsy as result of a fall from a chair) had three hospitalizations for severe abdominal pain. She was discharged twice from RI Hospital with no diagnosis found, admitted to St Joseph and operated on for possible appendicitis. The pathology report showed no appendicitis, 9) Sarah (with history of NEAR SIDS) had a neck injury in 1998 for which the mother has given three different dates as to when it took place. The mother testified (T pg 54 9/21/00) " that was in the summer and Sarah had gone to an amusement park in Mass and she went on a rollercoaster and had gotten banged around on the roller coaster." The father testified (T pg 72 9/21/00) in answer to, " And this injury took place in a chaperoned environment did it not?" " Yes, I believe a school field trip to one of the local amusement parks." (DCYF Exhibit E Assistant Superintendent of Warwick Schools) There were no school chaperoned trips to amusement parks in Massachusetts. 10) the old medical records hand delivered by the mother to Mills, were tampered with and altered (Exhibit G) 11) T pg 27 9/21/00 the mother was asked, " Did those medical records from Bridgeport Hospital say apnea, to your knowledge or did they say NEAR SIDS?" She answered, " They said apnea." Again she was asked, " There was no reflection of NEAR SIDS?" She answered, " They didn't like to call it that. They called it apnea and bradycardia is what they called it, and she was on an apnea/bradycardia monitor." (A common finding in Munchaussen by proxy is the medical knowledge of persons with this finding; these words are medical terms. In addition the father contradicted her testimony at page 74 as, " Did those records describe a NEAR SIDS situation to your knowledge?" He answered, " Yes." The father wrote in his affidavit of 10/15/99 the incident occurred in Ledyard Connecticut and the mother wrote in her 7 page document it happened in Bridgeport Connecticut- two cities on opposite sides of the state).

Dr Marc Feldman has determined just by hearing this case that it, " seems to involve Munchaussen by proxy but also

severe non-MBP abuse as well." He referred Mills to Dr Alexander but Mills had already received his support(DCYF Exhibit B).

The lower court upon unlawful procedure and by other error omits evidence to prejudice Mills. Mills' report to DCYF (Exhibit F) clearly reveals that she called about a sixteen (16) year old but during the conversation mentioned the other girl who had become an adult but was still living at home as well as mentioning the 4 and 14 year old sisters and the mother. The De reads @ pg 10, " Dr Mills further admitted that THE patient she was calling the Hot Line in regard to was 19 years of age at the time and had already started college." At pg 76 T 8/23/00 Mills did not admit that THE patient she called the Hot Line about was 19. This is an inference and erroneous conclusion to prejudice Mills and create an appearance of unprofessional conduct on her part. Mills called about a 16 year old that happened to have an entry in her medical chart about a NEAR SIDS event on her sister (NEAR SIDS not seen in the 19 year old's chart because all her records were to have been " lost in the Navy" according to the parents). Mills was alerted, prompted to more thoroughly review the old illegible medical records, after seeing the NEAR SIDS words in the 16 year old girl's chart. This allowed Mills to see that there were more than 18 injuries to two girls. The call to the Hot Line states the injuries on the 16 year old but then states a concern that the older girl had injuries on some of the exact same dates as her sister (Exhibit C). The board also erroneously alleged Mills did not inform DCYF of the two other children. Mills mentioned these children four times in the report stating, " he has a wife named Joyce and four children and two of the children Sarah and Erin had injuries that were all like a week apart for quite a long time...." When Mills was asked, " do you know the ages of the other two," Mills answered, " around 4 and 14." When asked, "are they male or female?" Mills answered, "all females." When asked, " what about the other children" Mills answered "don't have any information on them,(meaning knew of no injuries to them). The discussion at that point was about

fractures and contusions; clearly Mills " mentioned" the other two girls. Mills stated right from beginning of the call that there were four children. The board once again to prejudice Mills took one statement from the hotline call and one from the CPS protocol(Exhibits C,F)to allege unprofessional conduct. It reads, " there are two other children in this family that reporter did not mention." However, in the same report it reads, " The caller did state that the couple has two younger children, both females ages 14 and 4 years old.....and had no specific concerns for those younger children." Clearly Mills mentioned them and also mentioned the fact that the mother had told her she had a fractured shoulder (a reason for not showing for a well child check). The DCYF final report shows that the father only mentioned a few injuries as he did in testimony at the hearing, " I believe Sarah has had two, I think Erin one." When asked if there could have been others, he responded " there might have been." Later he admitted that all the injuries on the call to DCYF did in fact happen. (T pg 74 9/21/00).

If it was clear to DCYF (DCYF Exhibit C) that the "alleged victim" as Erin (16 years old), it should be clear to both the Medical Board and lower court. Mills reported injuries on the mother and 19 year old-both adults but not the "alleged victims." Whereby De @ pg 10 is erroneous and should be modified or reverse. Omissions such as the report by Mills of a 16 year old to DCYF is just one example of the record below replete with error clearly to prejudice Mills and in violation of her constitutional rights to a fair and just hearing and review of the record. To disregard competent evidence in the record in order to conclude the agency's findings are supported is denying Mills her due process and is unwarranted abuse of discretion. DCYF- EXHIBITS

DCYF EXHIBIT A

.....R.I.Gen Laws 40-11-6 statute on reports to DCYF for suspicions of abuse and/or neglect a) when any physician .....has cause to suspect a child brought to him or her for examination ,care, or treatment is an abused or neglected child as defined in this chapter...he or she shall report the incident or

cause a report thereof to be made to the department as provided in subsection (b)

b) an immediate oral report shall be made by telephone to both the department and law enforcement agency and shall be followed by a report in writing to the department and...explaining the extent and nature of the abuse or neglect the chid is alleged to have suffered.

C) The department upon receipt of such a report by a person other than physician....alleging that a child has been physically abused, shall investigate the report, and if the investigation reveals evidence of physical or sexual abuse, the department shall have the child examined by a licensed physician....Upon completion of the examination, it shall be mandatory for the physician ...to make a of his or her findings to the department

(This written report is a PRE; it cannot be made out without having completed physical exams) Mills should not be charged with unprofessional conduct because she was no longer the treating physician and made the call from her home. (Also told to cease the practice of medicine September 22, 1999)

DCYF EXHIBIT B

MOREHOUSE SCHOOL OF MEDICINE

5-1-00

Dear Mr Foster: Re: Dr Mills

This letter is in response to our recent telephone conversation in which you wished a written copy of my opinion in this case.....It appears that at least some of the children were not getting regular medical checkups as frequently as they should have. The listing of dates and injuries for patients "E" and "S" shows considerably more trauma than one would expect. E had multiple fractures, including one at a very early age. S had even more fractures and other trauma. Many children of their age would have suffered none of these injuries, some children a few of these injuries but it would be rare to find two children in a family with so many injuries. .....I believe that a report

to DCYF is not unreasonable.....Further investigation would then help to establish whether any basis exists to enhance these suspicions or explain them away. .....However, the child abuse concerns are not out of line.

Sincerely,

/s/Randell Alexander, MD PhD

YAHOO MAIL Oct 15 2003

From: Marc Feldman

Subject: Inquiry

Dear Dr Mills: Randell Alexander M.D. PhD is the nation's foremost expert on child abuse and this case seems to involve Munchaussen by proxy but also severe non-MBP abuse as well.....If he can't help ask him for a referral.

The following document not printed in full- 4 pages

DCYF EXHIBIT C

State of Rhode Island and Providence Plantations

Department of Children, Youth and Families

CPS Report Protocol

CPS Report Information

Name:Joyce Brown.....

Report Information:

Report Date: 10/05/1999.....

Report Participants:

Name	Relation
Steven M. Brown	Biological parent
Joyce Brown	Biological parent
Sara Brown	Birth SIBLING
Erin Brown	Reference Person

ALLEGED VICTIM

Erin Brown

"Reporter said that Erin suffered a skull fracture and is an epileptic, Erin suffered fractures and contusions on the

following dates: 6-29-91,10-5-91,11-19,91,2-3-93,4-22-93,and 9-1-93 Reporter said that these fractures occurred in such a close time frame that she is suspicious. Reporter siad that Sara's fractures and contusions occurred on : 1-21-91,6-7-91,10-26-91,11-2-91,1-6-93,8-18-93,2-4-94,6-26-94,9-19-95,9-28-95 Sara was also a near SIDS child. There are 2 other children in this family that reporter did not mention. Erin is about 15." On another page it reads, " The called did state that the couple has two younger children, both females ages 14 and 4 years old....and had no specific concerns for those younger children." Parents are quoted in this report to have said ".....and that her behavior (meaning that of Mills), in the presence of their children, had become inappropriate and possibly indicative of illness, paranoia, or psychosis. In their letter they requested DOH officials intervene to assist the pediatrician in finding evaluations and treatment services so that she could one day return to pediatric care. This matter was then again reviewed with Chief Investigator O'Donnell who stated that Dr Mills was well known to him....."Lower R.I. Court Decision reads that Mills reported only a 19 year old but the CPS report composed from the DCYF Hot Line call does not have Sarah (then 19) as the alleged victim. It clearly was Erin but Mills had to report her sibling due to the amount of injuries, serious nature of the injuries and the close proximity of injuries to the two girls. Mills also reported the mother had a shoulder fracture (causing her to cancel a well child checkup) and that she had no concerns regarding fractures or contusions on the two younger girls. This did not mean the mother was the alleged victim, just as Sarah was not. They still both had injuries and it needed to be reported because there is a pattern in abuse.

DCYF EXHIBIT D Full document not produced

Criminal Docket Sheet Report

Case ID: Description : Edward J. O'Donnell

Charge Information

Count 1 1105003A SIMPLE ASSAULT-DOMESTIC

Disposition: DISMISSED 48A
(this document to show that being personal friends with someone should not be reason to not investigate suspicions of child abuse- domestic violence and child abuse can be happening in one's best friends' home and they may not be aware of it)
DCYF EXHIBIT E

WARWICK PUBLIC SCHOOLS

Damon D'Ambrosio,Esq March 7, 2001

Dear Mr. D'Ambrosio:

This is in response to Geraldine Mills, M.D. letter(attached) of February 26, 2001. .....

In speaking to the Senior Class Advisor for 1998, Ms Penny Seacord, no senior trips were taken to any Massachusetts amusement parks at anytime in 1998. .....

Sincerely,
/s/ Richard A Rouleau
Assistant Superintendent

DCYF EXHIBIT F (Full document is 7 pages)
Hot Line call to DCYF October 5, 1999 by Mills
(Date on the report is the date it was transcribed 10/16/99 not the date Mills made the call)
Operator: My name is Richard
Caller: Alright that is all I need, I can do this anonymously?
Operator: You can do this anonymously.
Caller: Definitely?
Operator: Okay
Caller: I don't want to get any thing happen. Okay.....
Caller:.....four children and two of the children Sarah and Erin had injuries that were all like a week apart for quite a long time. And Sarah Brown in 1980- I guess when she was born-was a Near SIDS
Operator: Wait a minute Sarah is how old now?
Caller: Probably around 18
Operator: Okay so she is an adult

Caller: Yea
Operator: Alright so if she is an adult there's probably not much we can do for her.
Caller: Alright
Caller: But she was a Near SIDS
Operator-Okay
Caller: Then Erin Brown–born in about 83 so she would be what 16
(Mills asked if she could be anonymous, if they told her no she would have given her name; Mills did inform them of 4 girls but only two had injuries that she knew of. The operator began the questioning about Sarah because Mills told them her approximate time of birth. Mills called about Erin but had to inform them of the NEAR SIDS because Mills never received the records and abuse runs in families.)
Operator: Do you know the ages of the other two?
Caller: around 4 and 14
(Had the operator asked Mills their names she would have given them too)
Operator: Are they male or female?
Caller: All females
Caller: And then there was somehow–I guess the mother also had some kind of fractured shoulder at some point.
Operator: .....other than the fact that there seemed to be a lot of them and they seemed to be one right after the other.
Caller: I know. They just seemed to be very close together and
Operator: (interrupted caller) I mean you don't know what
Caller: I mean it could just be coincidence
Caller: No and kids fall out of beds and there are near SIDS
Caller: But it just...I don't know it just didn't seem right, an awful lot of them
Caller: they must be accident prone kids
Operator: Well. It would be nice to think that but we'll see.
(Mills would not state the above if she was doing this out of retaliation and her suspicions are now as high as could be regarding any case of domestic abuse/child abuse.

EXHIBIT G DCYF

Observations regarding altered medical documents: Re: Chronological Record of Medical Care, Naval Hospital Newport R.I. (No date) The lower portion of the form was pasted onto the upper portion after the line that reads (LAST 4 DIGITS) Re: Immunization record, Joseph T. Barrett, M.D. (No date) The immunization record was pasted onto the lower portion of a form with categories Family History, Birth and Development and Feeding history. The upper portion of the document was cut after the blocks. DATE and DOSE and Address. The cut was not executed in a straight line but rather in a jagged fashion. /s/ Eileen Hurley Dec.18,2000

(Deposition pg 81 6/1/00) "...the only one I recall seeing but it's hard to decipher some of the handwriting, admittedly..." (D pg 84) " Is it your testimony doctor, that the dates set forth in this transcript you have not been able to determine to be true or inaccurate based upon an inability to read the record?" " Based on an inability to read the record, I'd say yes." (T pg 48 10/19/00) " How then do you offer these opinions today doctor if there are portions of the records that you can't read and understand?" " Simply because there is enough I can understand.... " " You can exclude whatever else is in the record?" " To render an opinion I can exclude what I was not able to read, yes." (He found a fractured right radius but excluded a jaw fracture, skull fracture, lip laceration, wrist fracture, neck injury, fall from a chair resulting in epilepsy and many more)

2) TREATMENT OUTDOORS

Lower court's De @ pg 6 " Dr Eden explained that assuming there was a problem in a pediatrician's office building preventing its use, standard practice would require the physician secure a private environment to protect the sanctity of the doctor/patient relationship." (T @35 10/19/00)Lower court errs by stating Eden was " firm" in his testimony about Mills' "exams outside the office. Testimony

@ pg 58 10/19/00, " Where did this alleged physical exam occur?" His answer," I don't know." Asked, " was there any disrobing?" He answered, " I don't recall." Asked, " what constituted the exam," " I know only to the extent reading the family's complaint."

What is the purpose of a Hearing(H) if a Physician is not allowed any supporting evidence, no witnesses, and the Board /lower court merely base their conclusions on an " expert" witness testimony that is per his own admission based only upon the family's complaint? This is absolutely prejudicial of the substantial rights of Mills. The record below is totally devoid of competent evidentiary support. Barring this, the Board's own expert admitted to not having any information except what the Board gave him- the two complainants' letters and the medical records of the children. These records he testified met the medical standard of care, explaining he was " quire frank about this, " when he spoke to McIntyre T @pg 96 Dep 6/1/00.Eden was asked, " You don't know for a fact what happened do you?" (reference to the visit to Mills office by Browns on July 30, 1999). He testified, " No, I don't know for a fact what happened." (T pg 60 10/19/00) Eden testified ," it would only be appropriate if it was a very very very cursory exam barely qualifying as a true physical."

De by lower court @ pg 23, " according to Dr Eden the outdoor treatment Appellant engaged in was not justified.... such outdoor examinations were inconsistent with the appropriate standard of care." This decision again is an inference, a conclusion in violation of statute, is clearly erroneous based upon substantial evidence on the whole record. Here one must emphasize the whole record for the lower court makes myriads of decisions based on only parts of the record (prejudicial to Mills), omits parts of sentences altering the meaning of the testimony, omits sentences from paragraphs again to alter the meaning of the testimony and as above makes inferences based upon an " expert" testimony which admittedly was only based upon the Boards' witness testimony. Eden did

not know what happened; it was a very very very cursory exam barely qualifying as a true physical, as is often done (T pg 95 10/19/00 Eden (Exhibit A Treatment Outdoors) on camp forms filled out in doctors' offices, that are not adversely affected by contamination. Therefore, the De is clearly erroneous. In a few places on the record the lower court states that Mills herself admitted to various acts and testimony which according to the court proved Mills was not in accordance with the minimal standards of acceptable and prevailing medical practice.

De @ pg 23, " Appellant herself admitted that on one occasion she treated a child in a parking lot inside the patient's car and other times she would treat the children in the backyard she also conceded she administered the chicken pox vaccine in the yard and she drew blood from patients B and D outdoors." At the H McIntyre questioned Mills about a patient she saw at St Joseph Hospital yet the parent of this 5 week old infant did not testify. Mills again could not confront her accuser This decision by Board/ court was thereby made upon unlawful procedure, was in violation of constitutional or statutory provisions, and was arbitrary or capricious. Mills did admit to examining this infant in its car seat because the mother was concerned the infant was " not breathing right." The mother adamantly refused to take the infant to the emergency room and had Mills abandoned the request, had the infant stopped breathing, Mills would be held on counts of at minimum abandonment of a patient, possible manslaughter if not more. There is even a good samaritan rule and a physician is not immune from such.

Mills did administer chicken pox vaccine at the rear walkout of her office (not in a backyard as one would ordinarily picture a backyard of a house) during a mandatory date set by the R.I Health Department. The vaccine was distributed to each Physician on a set date (Mills in receipt August 18, 1999) and in a set amount based upon the doctors' report of how many patients in the appropriate age range they had. The vaccine must be kept frozen until used and Mills was

doing house calls at that time due to the real and documented contamination of her office buildings. In fact DEM and Sage Environmental are still cleaning up the 107 Warwick Ave property and will continue to do so indefinitely. About 75 patients needed the vaccine in order to begin school (mandated by R.I. DOH) in the following two weeks. The vaccine could not be brought to the patient homes by car in the heat of summer. Only the one parent, Brown made a complaint to the Board. The other approximate 74 families were not only relieved to have their children vaccinated but welcomed Mills' house calls, and immunization clinics (previously a meningitis clinic during the R.I. scare). It was brought to Mills'attention that being " outdoors" Mills might have to return into the building to obtain respiratory support as oxygen and other preventive anaphylactic medications should such an adverse reaction occur in any child to the vaccine. Mills contacted the CDC and learned not only would this be extremely rare an event, but according to OSHA very few Pediatric offices are completely prepared for cardiorespiratory arrest. Mills' office was prepared for such a scenario and Mills had been certified several times in Advanced Pediatric as well as Adult Life Support. The question then became, " how far the equipment was away from where the vaccines were administered." The equipment was within three feet of the cite of vaccinations but would have been a minimum of thirty feet away if the vaccines were given in the Pediatric rooms.

Blood was drawn on one child by mandate of the day care and the State of R.I. for yearly lead levels required on all children ages one to six. It was done in the secretary's van at the rear of the building in a secure and private environment. It was done by fingerstick. There are many vans set up in R.I. communities by not only the Blue Cross insurance company but clinics as John Ferris. In these vans full physicals are completed as well as cholesterol screenings, vital signs and much more.

Recently flu vaccines have been distributed to thousands in supermarkets and in cars even though medical

offices and hospitals equipped with life support equipment are still available. (Mills' offices were not available to her).

Lower court's De about treatment outdoors there is mention to the alleged contaminated buildings. De @ pg 24, " Appellant failed to present any evidence during the hearings to substantiate her claims that each of her office buildings that she inhabited was contaminated." Mills was rebuffed when she handed the information on the contamination across the table to Dr Stutz (as well as all other supporting evidence that Dr Stutz helped Mills carry into the H in two large suitcases).

This very lower court denied Mills reopening for this evidence on September 23, 2003 and again on November 6, 2003. The Board denied this reopening repeatedly from January 30, 2001 through June 2001 (three requests to do so)when the proceedings were still open, with reason being that it allegedly was " all character witnesses which would add little to further persuade the hearing panel to change their decision."Monitor reports from 3 M Corporation, DEM public records R.I. State Superior Court compliance orders on the Speedy Oil Petroleum Company, Providence Journal News reports, Channel 10 News reports (June 4, 2001 of Mills and her secretary doing house calls and pictures of the equipment solvent vapor extracting MTBE and petroleum products from the ground waters and beneath her building, DEM reports of hazardous to human health silver bearing CrO xray fluids to another office, and reports of chlordane indoors (not outdoors)as well as high levels of formaldehyde, hexanes, and 2 and 3 methylpentanes were all documented, available to the H panel and denied Mills. The lower De @ pg 24, " the Board did not believe that every building owned by Appellant was contaminated...." that appellant made admissions to the effect that she permitted her medical assistant to go in and out of the allegedly contaminated buildings while she waited outside." The only " expert" witness the Board presented, Dr Eden is a Pediatrician with no background in Environmental safety or Environmental Medicine. In testimony, he was asked, " Do you know if there

is gasoline below the building?" He answered, " I don't know." " Do you know what toxic building syndrome is?" He answered, " I heard of sick building syndrome once in the news" (Deposition @ pg 55-56 6/1/00) De @ pg 12-13 reads, " Mills did not dispute the fact that she allowed her medical assistant and young patients to go in and out of her office, when she herself would not enter the office because she believed it contained deadly toxins." (Treatment Outdoors Exhibit B,C)

The Justice cannot conclude that the Board's De is not arbitrary and capricious by simply ignoring competent evidence in the record, by once again making inferences and by making omissions in the only record below. The term " deadly toxins" was only used in the Brown complaint. Even in this mother's testimony before the Board, she used the words " it made her sick, there were contaminants in there,"not the words " deadly toxins." When McIntyre questioned Mills about these contaminants, Mills testified @ pg 56 8/23/0 " if I didn't find them out in time they could be deadly." On July 30, 1999 Mills had not yet confirmed the nature of the contaminant to the office building. She had confirmed as did DEM/RI the MTBE, gasoline, CrO silver bearing xray fluids and VOC's from her first rented office but not that of the current office. Mills and Brown had a one hour conversation regarding this issue with much speculation. What was known was Mills was quickly affected by the vapors, Tina her secretary told her she could tolerate it for several hours and any other individual was questioned as to whether they were affected and if so were told to refrain from entering. The Director of Blue Chip Insurance Company had been at the building that very morning of the complainant's visit and authorized the building for use in seeing Blue Chip patients. He verified that since a door was fixed the building was fine. (Exhibits B,C,D,E,G - R.I. DEM to EPA)

Justice errs in omission of Mills' testimony that, " it depends on how long you are exposed and to how much." It also depends on ones' own individual response to the agent in question. It certainly does appear unusual for one person to have

to remain outside and to allow others to enter. However, we all know that appearances may not reflect the real situation. In particular, the lack of knowledge will make one decide erroneously. Mills was barred from entering any information that would educate the panel to environmental issues, inclusive of the monitor reports, literature on the amounts of the contaminants which would cause certain reaction in humans. Mills was rebuffed by Dr Stutz of the hearing panel when she attempted to submit a book on " Formaldehyde and other Aldehydes." This book described the levels of safety for individuals whether they were already sensitized to this chemical or not. T @ pg 18, Dr Stutz stopped Mills from the completion of her testimony when she stated, " Tina VonHein the secretary described it like the foul odor of uncooked chicken. Though Tina had no knowledge of environmental medicine, she knew exactly what formaldehyde is described to smell like and knew before the monitor reports came back. Mills was not allowed to continue that Tina was affected after eight hours with the symptoms she described as being like she had three glasses of wine. (Exhibit F)

The inferences are Mills would put children at harm's way by letting them enter a building with " deadly toxins." This bars Mills constitutional rights of due process and is so wrongly affected by other error or law, unlawful procedure, and erroneous in view of substantial evidence on the whole record.

Mills in fact, had protected her patients from just this very thing. She did house calls so as to not expose those children to the previous known contaminants. As soon as she was certain of this building's contaminants, she once again did house calls (beginning August 3rd 1999). Mills determined the other pollutants by monitoring the buildings in the very same way as this building- via passive diffusion monitors.(Exhibit E)

The above lends to two discussions on argument and that is to the "hearsay" issue, the other to Mills being temporarily suspended based upon allegedly being of " an immediate danger to the public." (Latter in Argument)

HEARSAY

Lower court's De, " based on the rules governing administrative hearings and the nature of the hearsay evidence, this Court finds that the Board's admittance of hearsay evidence during the hearings did not unfairly bias the proceedings (De @ pg 29).

What has biased and prejudiced Mills and is upon unlawful procedure is to allow hearsay of the complainants but not of Mills. During the hearing (T @ pg 12 12/7/00) McIntyre states, " that is a hearsay statement." He was referring to Mills' testimony that she was sick while in the offices with contamination and that her employees and patients also complained of headaches, dizziness, burning eyes and many other symptoms. Mills testified, " I have letters from them too that I can present...." Mills was told, " she can testify as to that she was sick and I think she could testify that she observed her staff in some condition ... but not any conclusion....." Mills was not allowed to testify that Tina told her she had felt, " as if she had three glasses of wine, that it smelled like foul chicken odor and that it made her throat very dry." This was considered hearsay to McIntyre and the AHO. McIntyre stated, " I believe it is hearsay." (T pgs 9,10 12/7/00) Here he was referring to Mills testifying, " ...Tom Campbell came out and condemned the back room...." DEM Department of Environmental Management State of Rhode Island responded to Mills' call regarding the drainage pouring through the ceiling from Dr Elisa Liberto's dentist office, above. She allowed by human error on two occasions, xray tank fluids to overflow onto the floors and drip through the ceilings leaching out Mills' belongings below. Again, the report from DEM was denied Mills as supporting evidence. (Exhibit H, Letter from parent Lorraine Miller)

So the issue of hearsay is very important in this case. The court cannot without violation of Mills' constitutional rights and standard of review RIGL 1956 42-35-15(g)allow hearsay from the complainants and their teen daughter's

statements and deny Mills all that was told to her from the various State of R.I. agencies, Directors of Day cares, Child Abuse experts, Physicians in Environmental Medicine and others.

It was not " just" character witnesses that Mills was not allowed to enter as supporting evidence. Mills was ridiculed over and over again about a comment she made to Brown about the planes flying overhead (Mills' office on the landing path of TF Green Airport in Warwick). Mills stated, " with her bad luck they could be dropping jet fuel." Brown testified she believed Mills was " really scared." Though a comment with some sarcasm due to Mills' circumstances, the fact is that DEM is now going to measure the air quality around the airport for "benzene and formaldehyde." This is exactly what Mills did in her offices. Mills tried to submit as evidence a CNN tape from the Director of Charles de Gaulle airport, stating, " the cars are showered daily with jet fuel. This tape was made at the time of the Concord airplane crash. It is fact.(Treatment Outdoors Exhibit E 44a-45a, Exhibit F 49a-50a)

The other issue made by the lower court was that of Mills questioning Erin (16 years old) about whether she " smoked cigarettes, drank alcohol, used any drugs, was sexually active, ever depressed, or ever had suicidal ideation." With prejudice and in order to make it appear as though Mills did so unprofessionally, the De reads that Mills "only" asked Erin about her sexual activity and that she was " mortified." The American Academy of Pediatrics has what is known as Health Supervision standards. Each and every question that Mills asked belongs to those standards. No 16 year old teen should be mortified to be asked if they are sexually active in today's society. When asked if the teen would like privacy from her mother, they both agreed that " we have nothing to hide from each other." The questions were not asked on a front lawn or on a side walk next to the main street running through Warwick as the mother described it. Brown further stated, " so that all driving and walking by could hear." With those planes going

over Mills could not hear one foot from Brown. Certainly those in cars and anyone walking by could not hear 75 feet from the front lawn, sidewalk or main road where Mills met the family at her secretary's van at the rear of the building. Dr Stutz, an Orthopedic surgeon and Chairperson for the Hearing did not seem to think that these types of questions should be asked of a teen at a visit to have a camp form signed. According to Robert Brown, M.D. of Ohio, " it is important that physicians take every opportunity to ask these questions of teens because they often do not show for well care visits. (Exhibit A Treatment Outdoors)

TREATMENT OUTDOORS

EXHIBIT A

(T pg 95 10/19/00 Eden) ".....I have seen camp forms where they will just say with one line, do you think the child is in good enough health to participate in activities, and I think in those few instances it is probably possible to do .... less than a full exam clothed."

October 2002 PEDIATRIC NEWS

Use Your HEADSS With Adolescent Athletes

How to get teens talking

HOME environment

EDUCATION

ACTIVITIES

DRUGS tobacco .....alcohol

SEXUALITY

SUICIDE and depression

For more information visit the New York Medical College's Web site at www.complab.nymc.edu/Pediatrics/HEADSS.htm

EXHIBIT B TREATMENT OUTDOORS

Department of Health Board of Medical Licensure and Discipline In The Matter Of: Geraldine Mills, M.D. No:98-187 Respondent's Motion to Reopen Proceedings for Introduction of Supplementary Documentary and Testimonial Evidence

A. Documentary Evidence

1. Call schedule St Joseph Hospital for December 16, 1992
2. Letters to Massachusetts Board of Licensure by Alfred Toselli, M.D., Mark Hough Vice-President St Joseph Hospital
3. Paycheck May 30, 1994.....
6. Correspondence of Respondent Voluntarily Withdrawing Application to Rhode Island Hospital directed to.....
7. Correspondence from Albert Kirby PhD Associate Dean Case Western Reserve University dated July 2, 1986
8. Photos showing proximity of gasoline station to 107 Warwick Avenue
9. NIH Consensus Development Conference Statement Vol 6 No 6 October 1, 1986 Infantile Apnea and home monitoring
10. 11.2 Medical Records, Prepayment for Medical Records effective 9-8-98
11. Monitoring Reports 3M Corporation
    Hexane-65 Jefferson Blvd
    770 Reservoir Aver (belongings)
    Gasoline-107 Warwick Avenue
    Formaldehyde 1025 Warwick Avenue

And Stipulation of September 21, 1999 (by McIntyre)
(This is not character witnesses- therefore Board's reason for denial of motion being all character witnesses is erroneous and violates Mills due process in that the proceedings did not close until July 11, 2001 when she was suspended by a final decision of the Board).

EXHIBIT C TREATMENT OUTDOORS

R.I. Department of Environmental Management
March 9, 1999 Mr William Torrey,Chief
Dear Mr. Torrey, " This is to advise you that an Emergency Leaking Underground Storage Tank site has necessitated a State response using Federal Trust Fund monies.....Speedy Oil, 107 Warwick Ave,Cranston. ....Vapors .....have been found in a residence and a commercial building(a pediatrician's office) as well as nearby sewer lines....."

(Entire document not reproduced but content is accurate)
State of Rhode Island and Providence Plantations Department of Environmental Management Office of Waste Management and Office of Compliance & Inspection In Re: Speedy Petroleum, Inc. Speedy Auto Repair,Inc and Dikran Tashian a/k/a Richard Tashian d/b/a Speedy Gas

IMMEDIATE COMPLIANCE ORDER

A. Introduction Pursuant to Sections 46-12-9, 42-17.1-2(u) and Chapter 42-17.6 of the Rhode Island General Law 1956 (1988 Reenactment), as amended, you are hereby notified that the Director of the Department of Environmental Management (the " Director") has determined that immediate action is required to protect human health and the environment as the result of your violation of one or more of the following statutes and or regulations: the Water Pollution Act R.I.....Oil Pollution Control Act.....the Regulations fro Underground Storage Facilities Used for Petroleum Products and Hazardous Materials (1993) as amended (the "UST Regulations") and/or the Rules and Regulations for Groundwater Quality (1992) .....

B. Respondents

1) Speedy Petroleum, Inc is the owner of a certain parcel of property located at 95 Warwick Avenue in Cranston Rhode Island.....

C. Findings of Fact

1) One or more underground storage tanks.....were located at the Facility, which tanks are/were used for the storage of petroleum products or hazardous material.....

7) On 29 December 1998, Kenyon Environmental, consultant for the owner/operator witnessed the removal of five(5) tanks at the Facility. Evidence of leakage from the UST systems was noted. The report of these activities was not submitted to DEM within the 30 days required by the UST Regulations.

10) On 22 February 1999, a representative of the

Department investigated a complaint of gasoline vapors at the property of Dr Geraldine Mills located at 107 Warwick Avenue Cranston, R.I. The DEM representative confirmed the presence of gasoline vapors. At this time Lincoln Environmental, Inc (" Lincoln") was hired by the Department to measure the air quality at the above address and to investigate adjoining properties based on field screening of air done by the Department's representative.

11) Air monitoring of the basements and the first floors with field screening instruments was performed at 107 Warwick Avenue and adjoining property.....Results indicate the presence of significant levels of volatile organic compounds (VOCs), in addition to gasoline odors in the basement and first floors.

12) At this time, due to the threat to human health and the environment the department retained Lincoln to investigate the extent of contamination in groundwater and soils.....

16) This confirmed release of petroleum products threatens of has already resulted in pollutants entering the soils and waters of the state and has impacted at least one residence, one commercial building and underground utilities in the area.....

FOR THE DIRECTOR
/s/ Terrence Gray, P.E. Chief
RI Department of Environmental
Management Date: March 4, 1999

January 2000 Providence Superior Court approves consent order finding the petroleum contamination constituted a public nuisance. Sheldon Whitehouse v. Speedy Oil Petroleum,Inc.,et al C.A. No: PC 00-229

DEM's Senior Environmental Scientist Peter Sullivan in that action filed affidavit stating when entering Mills' office he was " immediately hit by an overwhelming odor of gasoline." (Affidavit para #13)

January 21, 2000 Providence Journal News -Mark Arsenault-

Journal Staff Writer " The state and the owner of a Cranston gas station that was the source of a fuel spill.....reached an agreement.... Judge....Silverstein blessed the agreement between the attorney general's office and....owner of Speedy... 1/15/00 Providence Journal News " A judge yesterday gave state...."unobstructed access" to the property of a Cranston gas station on Warwick Avenue ....contaminated soil and ground water said Jim Martin, spokesman for Atty.Gen Sheldon Whitehouse....." Asst Atty. Gen. Terrence J. Tierney and DEM legal counsel Brian A. Wagner told the court...Tashian failed to implement an approved cleanup strategy for the contamination from petroleum from Speedy gas, Martin said."

STATE of RHODE ISLAND SUPERIOR COURT
Providence, SC
Geraldine Mills, M.D. C.A.No: 01-1034
vs
State of Rhode Island
Department of Health Board of Medical
Licensure and Bruce McIntyre, Esq

Defendant's Objection to Motion for Writ of Mandamus

".....hereby respectfully object to.....("Mills") Motion....which seeks to compel a decision by the Hearing Panel of....Board.....on Mills' motion to Re-Open for Introduction of Supplementary ....Documentary...Evidence....

Sheldon Whitehouse
Attorney General
/s/ Anne T. Turilli
Special Assistant Attorney General

EXHIBIT D TREATMENT OUTDOORS

Full article not printed- Providence Journal News Section C Gas Station is Suspected Leak Source-Cranston-State Department of Environmental Management has ordered Speedy Oil...to determine if company was responsible for an underground gasoline leak that has produced vapors inside...and office building...On February 22 a doctor's office at 107 Warwick Avenue called DEM to complain of gasoline

fumes...DEM hired Lincoln Environmental to assess the extent...to install equipment in the basements of the two buildings to extract gasoline vapors from the surrounding soil. buildings to extract gasoline vapors from surrounding soil.

Mills' office known as Pediatrics, Adolescent, Young Adult and Environmental Medicine was relocated to 107 Warwick Avenue on July 15, 1998. Mills detected odors of terpentine in ambient air, purchased 3M monitors costing $500.00 placing one in the basement of her office building. Mills did not call DEM about gasoline vapors but had her brother Attorney Stephen Mills present the report findings of 90.6 ppm gasoline to DEM and the following are the results:
3M Diffusional Monitor
Analysis Report Report Number
99-00608page 1
No.of monitors
Analysis performed 02/05/99Analyzed by:Scruton
Client:Ms Geraldine Mills191 Squantum DriveWarwick,R.I.
JC1215 12/29/98 720 min
Total Hydrocarbons as Gasoline 8710 micrograms 397 mg/m3
90.6 ppm
/s/ Meredith Scruton
Project Manager
3M Analysis Services provided by Braun Intertec Corporation
B.I.C. Chemistry Department
6875 Washington Avenue South
Minneapolis, MN 55439-0108
(The process known as " solvent vapor extraction" is still ongoing today. DEM was advised as early as 1995 to investigate basements of commercial and residential buildings
EXHIBIT E TREATMENT OUTDOORS
Not printed in original form but all information accurate
Geraldine Mills Laboratory: Braun Intertrec Corp...
99-05975 CVXX-99-123A M.Scruton/612-942-4813

Pass.Mon.

Date received: 08-04/99
Date reported: 08-13/99

Compound
Inorganic
Formaldehyde

3M No.4D 08/11/99

Dilution Factor	MDL	RL	Sample Result
1.0	0.01	0.01	0.30 ppm

(This information was received by Mills after August 13, 1999 so that on the date of the Brown visit to her office Mills did not yet have confirmation that it was high levels of formaldehyde that was causing the air quality problem in the office at 1025 Warwick Avenue Warwick R.I.)

EXHIBIT G TREATMENT OUTDOORS
full document not printed but this is information in its original content March 17, 1999
AMBIENT AIR QUALITY TESTING AT 107 PEDIATRIC OFFICE BUILDING-BASEMENT

CAS NUMBER	COMPOUND IDENTIFIED	CONC Ug/m3	Ppb
527-53-7	BENZENE	0.7	0.1
526-73-8	BENZENE	2.3	0.5

All the following are also benzene

95-63-6		
108-67-8	8.0	1.6
933-98-2	2.2	0.4
874-41-9	0.9	0.2
611-14-3	0.9	0.2
622-96-8	0.5	2.6
	4.9	1.0

The list is pages long

1634-04-4	MTBE	Ug/m3	Ppb
		3.9	1.1

Noted at page 3 released by Air Quality Sciences, Inc Date prepared March 22, 1999 (4 weeks after solvent vapor extraction began below building)

RHODE ISLAND DEPARTMENT OF HEALTH
OFFICE OF ENVIRONMENTAL HEALTH RISK ASSESSMENT

PROCEDURE FOR ADDRESSING GASOLINE CONTAMINATION OF INDOOR AIR RESULTING FROM GROUNDWATER CONTAMINATION IN PRIVATE RESIDENCES JUNE 1991
page 1 of 3
1. Test for explosivity.....
2. Screen for VOCs.....
3. Monitor for specific VOCs
3a Evacuate based on acute exposure:

	Healthy Adults	Others
Gasoline	75 ppm	30 ppm
Benzene	0.025ppm	0.01ppm
hexane	12.5 ppm	5 ppm

TESTIMONY OF JOYCE BROWN 9/21/00 BEFORE RI BOARD OF MEDICAL LICENSURE AND DISCIPLINE
PAGE 21 LINES 1- 23
Q. And that Dr Mills let you know that she left there for a particular reason?
A. Yup
Q. And that was what please?
A. Something with carpet.....
Q. Okay in your letter to Mr McIntyre you talk about carpet fibers to benzene to pesticides?
A.Uh-huh
Q. Where did you come up with that information?

A. Because Dr Mills told me she thought there was BENZENE in the second-----the third office and that there was gasoline fumes and she was afraid of benzene poisoning and that she had tested her blood or had her blood tested and thought there was benzene in her blood.
Q: Were you sure she said benzene?
A. I am sure she said benzene

.....

Q. So you are certain it was just benzene?
A. I'm certain because it was a bizarre statement.
Q. And that occurred sometime between 1995 and 1996?
A. Uh -huh.

(Mills bought the 107 building July 15, 1998 so Mills could not have made this statement about benzene in 1995 and/or 1996. Joyce Brown either did not believe Mills or for an agenda for the Medical Board chose not to believe Mills. De of the lower court reads @ pg 23-24 " Furthermore, the Board did not believe that every building owned by Appellant was contaminated as suggested in her testimony. Appellant failed to present any evidence during the hearings to substantiate her claims that each of her office buildings that she inhabited was contaminated). Mills handed the information to the Hearing panel, in particular to Dr Stanley Stutz and each time was rebuffed. Mills presented the actual soil sampling from below the 107 building to the investigating committee on September 22, 1999 with Public records from DEM and the news articles but was rebuffed there as well, long before the hearing even began.

February 16, 1999 affidavit of Parent Lorraine Miller

When entering the building on 107 Warwick Ave, I smell a strong terpentine smell. It makes me feel like a have trouble breathing. I also seem to get a headache and become very aware of my own lungs and the way I am breathing. The smell makes me feel sick. I have come into the building for

the past 5 months at least twice a month only for about 15 min each time.
/s/Lorraine Miller

(There were many more affidavits from the employees and parents of Mills' patients stating this and a myriad of other symptoms that adversely affected them- some with worsening of their asthma, dizziness, burning and watery eyes and others
including DEM's very own Peter Sullivan who stated, " I was immediately assaulted by the strong odor of gasoline.")

EXHIBIT H TREATMENT OUTDOORS
document is not printed in full but all information is as per original
RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT DIVISION OF SITE REMEDIATION RESPONSE REPORT FROM

City/Town: Warwick Report #: 96-184
OIL:
Hazmat: Emergency Response: XX
Complaint: XX

Site Remediation
Lust
Other
Complaint Received

Received by: JB
Date: 17-Apr-96 Time:3:00PM

Name:
Address:

Name:
Address: 65 Jefferson Blvd
City: Warwick
State: RI
Telephone 467-6111

Nature of Incident: X-RAY PHOTO CHEMICALS LEAKING FROM UPSTAIRS OFFICE
Material involved: PHOTO CHEMICALS

Summary: I arrived on scene and met with the property owner's son, who showed me the downstairs office that is occupied by a Pediatrician. I observed that the ceiling tiles and the carpeting had received heavy water damage due to a leak of some kind from the upstairs office that is occupied by Dr Elisa S. Liberto, DMD. I observed a small x-ray developing operation in what appeared to be a supply closet. The developer system had a developer bath and fixer bath to either side of a rinse bath....The system had no provisions for a shut-off in the event that the container became full. The system relies on human initervention to prevent overflow. I observed several full containers under the counter that contained waste material from the x-ray developing operation. RI DEM records indicate that Dr Liberto disposes of the material as a hazardous waste, silver bearing or non-hazardous waste liquid, Cr-O4 (Spent developer). The property owner's son and the Pediatrician Dr Geraldine Mills, asked it I had any recommendations or concerns. I indicated that in consideration of the facts that the effected office is that of a Pediatrician and there is a large possibility that the material spilled was a hazardous waste , it would be prudent to replace the carpeting in the effected office.
Investigator(s): Tom Campbell Date: 17-Apr-96
Signature(s): /s/ Tom Campbell Time: 4:15 pm

(It is interesting to note that no name appears on this form by DEM as to who made the call to report the incident. Mills called DEM when she arrived seeing this happen for the second time. Mills went upstairs to the Dentist office and saw Elisa Liberto mopping up the floor behind her reception area. The Dentist had informed the landlady that it was from rain and snow).Furniture in Mills' office as brown wood chairs were leached white from the chemicals. Mills did not place any claims against any party.

EXHIBIT F TREATMENT OUTDOORS
"FORMALDEHYDE AND OTHER ALDEHYDES"
(Office of Research and Development of the Environmental

Protection Agency pursuant to Contract 68-01-4655 under Dr Alan P. Carlin Project Officer did the work on which this publication is based)

This publication was in 1981 and since that time the lowest safe thresholds for formaldehyde have decreased(see work of Thad at Ball State University.....

(Mills presented this book by the National Academy Press to Dr Stanley Stutz of the Hearing Panel at the RI Medical Board Hearing and was rebuffed).

The level of formaldehyde in Mills' office from a monitor at her desk read 0.3 ppm. The following table shows the symptoms at various levels:

At page 185-" ....the severity of symptoms appears to be dose-related; in general at low concentrations below 0.05 ppm no effects were reported." At page 187, ".....some people can detect odor of formaldehyde at 0.05 ppm....Symptoms of eye irritation were reported at concentrations as low as 0.05 ppm. At page 186:

Health Effects Reported	Concentration
Neurophysiologic	0.05-1.50
Odor threshold	0.05-1.0
Eye irritation	.01-2.0
Upper airway irritation	0.10-25

" and the low concentration (0.01 ppm) was observed in the presence of other pollutants that may have been acting synergistically"

(In Mills' office small amounts of chlordane were also found indoors, not outdoors, in a control study of the air quality; this pesticide is based on organic solvents).

Results from 65 Jefferson Blvd office
Results from September 5, 2001:

adhesive: styrene	480	ng/sample
	81	toluene
	140	2 butanone and others

carpet : Pentane 2 methyl 38
Pentane 3 methyl 65
C Hydrocarbons 9.1
Cyclohexane,methyl 6.8
3M Diffusional monitor over patient charts
Hexane total hydrocarbons 0.194 ppm
(as performed 8/10/98)

3) Williams Syndrome

Lower court De @ pg 24 states, " appellant asserts the Board's conclusion that later examination revealed nothing wrong with Patient F is contrary to the evidence the Board heard. In light of the cumulative testimony presented .... This Court finds that there was substantial evidence supporting the Board's finding that the Appellant's medical treatment of Patient F constituted unprofessional conduct." The court then cites 5-37-5.1 (19), " the incompetent or negligent practice of medicine is sufficient for the Board to find that a physician committed unprofessional conduct. The court furthers, " During the proceedings the Board heard Dr Eden testify that a competent physician would not have suspected that Patient F had Williams syndrome. The Board then found that the mother was a credible witness and when she took her daughter for a heart exam the witness testified the doctor said that there was no reason for additional tests to be conducted and there was no reason for her even to be there. (T @ pg 10 10/5/00)

Again we deal with hearsay. The mother testifying at the Board about what a doctor told her is hearsay. Assuming that all hearsay including those statements Mills testified to (ex. DEM Tom Campbell on the hazardous xray fluids and others) are allowed, then one need only review the record below (in particular pgs 18 &19 of Patient F's medical chart (Tori). This is the evaluation by the Cardiologist Dr Lucy Buckley. It reads " return visit for EKG scheduled in six months." This is the evidence on the record below and it is absolutely egregious that a Medical Board, a state court would determine that the mother

was credible in stating " there was no reason for additional tests." The succeeding doctor order a skull/head xray - he therefore believed further testing was necessary. In fact, the mother testified she "switched Pediatricians to get a second opinion and she wanted the head xray done too." (T pg 38 of 10/5/00).Since the court has to accept that the Board found her credible as controlled by R.I. Gen Law 1956 42-35-15 (g) which provides for the review of a contested agency decision the court must then further abide by the review of the six issues for which Mills substantial rights have been prejudiced. Dr Lucy Buckley agreed to witness for Mills, sent Mills her entire file (it was only one visit because the mother did not return for her followup medical care on Tori), but was not allowed to witness for Mills. Dr Buckley did not find " nothing wrong with the patient." Her evaluation reads that Tori had a heart murmur in the pulmonic area as well as a systolic ejection click also in the pulmonic area. She found Tori's weight was far below the 5th percentile (1 1/4 lb less than expected for her age). She did not measure Tori's head circumference and told Mills she does not do this measurement on any of her patients. Cardiology is a specialty but Primary Care and Pediatrics which is part of Primary Care has as one of its main tasks to compile all information from specialists, to work as a team, to determine what the diagnosis is on a given patient. Dr Buckley gave Mills pieces of information that Mills could use to then make a more precise differential diagnosis. Mills took the conclusions of Buckley 1) pulmonic murmur 2) pulmonic click 3) weight less than expected for age (less than 5th %) and then her own conclusions 4) head circumference then decreasing from 95th to 25th % known as microcephaly 5) a history of vomiting and GE reflux 6) age less than one year and lastly the mother's own words at the time of the medical visit, " my brother -in-law says my daughter looks like an elf," and still arrives at a differential diagnosis of 1) malnutrition 2) malabsorption 3) possibility or R/O Williams syndrome 4) Failure to thrive. Dr Buckley's evaluation reads (pg 18 Tori's medical chart), " the parent had

difficulties with a day care director." It was not until the parents testified at the hearing on October 5, 2000 that Mills learned that this day care was Jack and Jill. Mills contacted the day care Director Linda Essex and learned that the mother was neglecting the infant, watering down her formula, and that the day care saw the infant as "failing to thrive." This is exactly what Mills had begun to work the infant up for. Essex agreed to witness for Mills but she was not allowed; Essex appeared in court on March 16 for Mills in her case against McIntyre and the Board and gave Mills an affidavit at that time. She was not allowed to speak on Mills' behalf once again. It must be noted here there was no complaint about the care Mills gave to Tori nor any complaint about Mills at all during the mother's visit to the Cardiologist; ONLY a complaint about the day care Director. It is Mills' belief that the complaint by the Cinquegrana family did not occur until after this family may have transferred its child care to that of C.H.I.L.D.,Inc (case # 04-442 U.S. Supreme Court). (Exhibits Williams A,B,C)

Eden the " expert " for the Board, did not testify a " competent physician would not have suspected that Tori had Williams syndrome," as the lower court states De @ pg 24. Justice of the lower court is in error when he concludes or affirms the Board's conclusion a "competent physician would not have suspected Williams." This decision is again in violation of Mills substantial rights. In deposition June 1, 2000, Eden stated, " There is nothing in the record which would show Mills to not be competent." @ pg 96. He was asked, " Dr Buckley didn't say that Dr Mills' referral was inappropriate did she?" He answered, " No, it is not stated it is inappropriate." In fact she wrote @ pg 19 Tori's record, " please contact me if you should have any further questions regarding this very interesting and challenging case." Eden was asked, " in fact she found a heart murmur didn't she? Eden, " Yes." There is no competent evidence in the record to then support the lower court's /Board's De that " no competent physician would have considered Williams syndrome." Eden at hearing T @ pg 96

10/19/00, "Mills' medical records met the standard of practice and care." At pg 77 T 10/19/00 " I would not go so far as to say unfit to practice Medicine." Again @ pg 91 T, " And that was you testimony in deposition," he answers, "Yes." " It hasn't changed as of today has it?" Answers, " No." He was referring to Mills' differential diagnosis of the infant. Eden stated @ pg 92 T 10/19/00, " I think she was wrong," when referring to Mills' suspecting the possibility of Williams in this infant There is no logical rational basis to find that a Physician could be " wrong" about a " possibility." The Webster definition of the word " possibility," embraces that one is not wrong when using the word to describe an entity. Eden is asked, " Doctors are frequently wrong aren't they?" He answers, " Absolutely.". " Is it the standard of practice if a doctor has a suspicion that the condition exists to find out if it does exist?"He answered, " yes, that is the standard." Eden admitted in testimony that Mills was following a standard that is allowed all physicians. To bar Mills from her livelihood by concluding erroneously Mills committed acts of unprofessional conduct strips her of all constitutional rights and is in egregious violation. Eden described at length as an expert with credential at RI Hospital as having begun a Clinic at same hospital was deposed on June 1, 2000 and then testified in the matter of Mills v Nolan on October 19, 2000. This gave him five months time to prepare as an expert. T @ pg 70 10/19/00 he was asked " Do you know what Williams syndrome is ?" His answer is " I don't remember offhand." " Would a head xray have any significance to failure to thrive?" " I don't think a head xray could have significance as to whether Tori was a failure to thrive."

Eden was asked to read one paragraph in Nelsons' Textbook of Pediatrics (Exhibit D) when he did not remember was Williams was. This paragraph did not discuss microcephaly a very common finding in Williams. (Exhibit E-list of microcephaly) Mills has consulted several Pediatric Neurologists, a geneticist in the field several Endocrinologists at Boston Children's and Westchester County Medical. One

doctor told her that this expert's testifying was, " pathetic." The rest explained the head xray ordered by the following physician was not sufficient to determine the diagnosis in this child. They explained CT with bone windows and/or MRI of the head as well as a metabolic work up with screening for amino and organic acids would be necessary. (Exhibit F)

It is clearly in error and erroneous to cite a case as the lower court did in Livingston MD vs Arkansas State Medical Board. In this case a physician diagnosed a patient as pregnant for a period of four months when she was not. There is no similarity of this case to that of Mills. Mills did not diagnose Tori with Williams but placed this in a list of possible causes for her symptoms and physical signs. Mills even told the mother that it was most likely a nutrition problem as Dr Buckley's evaluation reads, " as per Dr Mills you need to increase her calories." The mother wrote, " not gaining weight," as her only concern about her daughter on the intake sheet at the visit to Dr Buckley.

The medical records of Tori show that there was neglect of medical care as well as what we know from the day care director, neglect of her both nutritionally and in her appearance. Dr Buckley's evaluation (pg 18 Tori's medical record) states, " the parent had difficulties with a day care director." At the hearing 10/5/00 the father testified the day care he had taken his children to was Jack and Jill. Mills later contacted the Director and learned of the medical neglect. The day care director described her being brought scantily clothed for winter, smelling of urine, and looking extremely thin for an infant of her age. (Exhibit G)

On September 21, 2004 this mother stated in court Mills never saw her daughter on a Sunday and Mills never had office hours on Sunday. This is false. The mother could not bring her daughters during the week so Mills made special arrangements to do their well checks during the weekends when she was on call seeing other sick patients. One need only review the medical progress notes of 1/28/96 Sunday and 11/10/96

another Sunday.

Just as this mother is making false allegations regarding Mills never having office hours on Sunday, she made false allegations about Mills' giving shots, false statements about Mills' tone which was not aggressive. Mills did several immunization clinics, one at St Joseph Hospital during a meningitis scare in the early 90.s and another at her office in 1998. Mills gave thousands of shots and never needed a parent to hold the children. It is standard procedure to ask if a parent would like to hold to ease the child or infant's fear but often the parents themselves fear needles. Mills would ask if they would like to be present and even hold to console their children. In building a practice from one patient to 700 families, it would never be done with an aggressive and irritated tone. Mills was denied her constitutional rights to have witnesses and those letters from parents which all state an entirely different picture than that portrayed by Cinquegrana. (Exhibit H)

If one reviews the record below it is easy to determine that the Cinquegranas are not being truthful for their agenda or that of McIntyre is the only question. It is fact that the first witness list prepared by McIntyre December 10, 1999 used the word " aggressive and threatening," and that over 20 persons were going to testify to Mills being characterized as such. It was McIntyre's hope that they would all testify. Dr Russo and Dr DiLorenzo both admitted that they never even talked to the Board/McIntyre and certainly never told them Mills was aggressive or threatening. These were McIntyre's words when he called Mills harassing her at her office on October 9,1998 when telling her , " I am going to get you."

From the record below what one can determine about the credibility of Deborah Cinquegrana is as follows:" Did the doctor ask you to come back for a second evaluation?" The mother states, " NO." (T@pg 36 10/5/00) A review of Tori's chart at page 19 explicitly shows the mother is not credible. The decision of the lower court is clearly erroneous in view of all reliable and even the only evidence allowed on the record "

No, It was my first visit or one of my first visits..." (T @ pg 38 10/5/00) and again states the same @ pg 39. She was asked when Dr Newstead order the head xray and she stated it was on the first visit to him. Her first visit to him was on 9/3/98 but the skull/head xray was not ordered until September of 1999- one year after her first visit to him. The mother had claimed to have gone to him for a second opinion and he ordered the xray immediately. Again the record shows that the mother is untruthful and not a credible witness. Though the court cannot substitute its judgment for that of the agency in finding the witness credible, the record below does not support the Board's decision. A review of this must be done to afford Mills her constitutional rights and to no longer prejudice her.(Exhibit I)

It is of concern that the lower court found that Mills " used all three terms at some point or other," regarding Tori. These terms of " elf, dwarf, and midget," were not used by Mills at any time. It is in error that the court could read the record below and arrive at such an erroneous conclusion. When the mother was asked, " is that the word she used," the mother answered, "Yes." " Are you sure of that?" She testifies, I'm positive because she showed me a picture...."(T @ 28 10/5/00) The word referred to here was "dwarf." The mother's handwritten " original" complaint letter only spoke about medical records and medical bills/copying fees. When McIntyre aided the mother in creating a new letter, issues that were never before brought up surfaced. The mother saw Dr Buckley after her last visit to Mills and even then there was no concern about the daughter's longevity, about her being short, about anything except as in the mother's own writing, " not gaining weight."(Exhibit J) The only mention of a word " elf" was by the mother herself when she told Mills that her brother-in-law made the comment.

In the altered complaint (aided by McIntyre) in paragraph 7 the word " midget," is used. When asked about this the mother testified, " it wasn't—obviously is wasn't midget because midgets are small." (T@ pg 32 10/5/00) Therefore the

De @ pg 14 wherein the justice of the lower court states Mills used all these words in referring to Tori is as per all six categories clearly erroneous, affected by other error and simply not supported by the record below despite Mills being deprived of all supporting evidence.

One last example of the record below not supporting the decision of the Justice or Board is as follows: " Did you ever discuss with Dr Mills any member of your family or someone saying your daughter looked a little like an elf?" She answered " A dwarf." (T @ pf 28 10/5/00) Yet just a moment later she is asked, " Did you ever tell Dr Mills that any member of your family or any of your friends observed that your daughter looked a little like an elf?" Answer, " Yeah I did." (T@ pg 29 10/5/00). Mills never told this mother anything except that her daughter appeared underweight. When Mills told the mother she would like the infant to be seen by the Cardiologist it was to rule out a heart murmur. The mother admits (T @ pg 28 10/5/00) that " it was a long name, I cannot think of the name, and it was similar to dwarfism." The name was Williams syndrome and it involves failure to thrive (not gaining weight) and heart murmurs, microcephaly (small head circumference) vomiting in less than a one year old infant. Lastly the mother was asked, " Did you observe whether or not there was any basis or any reason for Dr Mills to have concluded that maybe this was an issue that had to be addressed?" She answered, " Well she said my daughter was small for her age." " And she was, wasn't she?" " I guess, I'm not a doctor." (T@pg 31 10/5/00)

It is standard procedure to do a differential diagnosis on all patients in medicine. An analogy is the woman with a lump in her breast. She has a biopsy done to rule out cancer. There is anxiety involved in not only the procedure but in the wait to determine if there is malignancy. Though Mills knows that the mother did not have any anxiety about her daughter's height she may have had some about her not gaining weight (as she told Dr Buckley). It is in violation of Mills' constitutional rights to

be barred from the practice of Medicine now five years for preparing a differential diagnosis on a patient, for being completely honest with a parent about the growth of their child and for making a referral to a cardiologist to rule out a heart murmur (which the infant did in fact have).

The certified record does not support the lower court's decision that Mills was not competent, does support that the mother was asked to come back for additional tests and that the mother knew that Dr Mills did not use the words elf, midget, dwarf, that the mother herself told Mills the term " elf," and that the mother denied the word was " dwarfism" by stating it was only similar to dwarfism. The name was Williams and Mills did not diagnose the child with it. As in the case analogy by the lower court in which the woman was told she was pregnant this case differs because the parent was not told the child had Williams, was only told that there was a possibility and that the more likely diagnosis was not getting enough calories.

EXHIBIT A WILLIAMS SYNDROME
full document not printed but information that is printed is exactly as original Pages 18&19 of Tori's
June 9, 1998 Medical chart
Geraldine Mills, M.D.
770 Reservoir Ave
Cranston, R.I. 02920
RE: TORI CINQUEGRANA
D.O.B. 6/8/97
Dear Dr Mills:

I saw Tori Cinquegrana for cardiac evaluation on May 28, 1998. As you know she is a very active, asymptomatic 11 ½ month old girl who is referred because of concerns about poor growth and possible William's syndrome. .....but the baby is very small with height at the 5th percentile and weight at well below the 5th percentile or approximately 1 1/4 lbs. Less than expected.

.....

The baby developed projectile vomiting at 1 week of age, and although the clinical diagnosis was gastroesophageal reflux, gastroscopy at Hasbro was apparently normal. .....However, the total intake is only 23-25 oz daily.....The baby has apparently been in a very good day care setting and was recently switched to another facility because of parental problems with the Director. .....

.....She was screaming at the onset, but then more cooperative sitting on her mom's lap.....and there was a faint variable systolic ejection click over the pulmonary region. There was an insignificant systolic murmur over the same area.....

Additionally, there is no evidence of structural heart disease and no other features of William's syndrome such as elfin facies, psychomotor retardation, hypotonia, and corneal opacities.....

I have advised the mother to follow your recommendations regarding increased caloric intake. I have suggested that she increase the formula to 24 calories per ounce and minimize intake of fruit juices and plain water. .....

The diagnosis is a benign functional murmur of childhood and there is no need for SBE prophylaxis. However, return appointment has been scheduled in six months to repeat EKG.

I thank you for allowing me to see this challenging baby and hope that you will call with questions.

Sincerely yours,

/s/ Lucy Buckley M.D.

Pediatric Cardiologist

(Mills did contact her back on many occasions since this evaluation was received by Mills on June 29, 1998. Mills asked if a head circumference was measured and Dr Buckley stated they do not do them on their patients. Mills also questioned the height measurement obtained by the cardiology office- 27 1/4 inches- because Mills got 27 3/4 inches four weeks earlier. This is a significant change on a growth chart

at that age and the infant could not have lost ½ inch in height. There are no corneal opacities found in Williams syndrome. Williams syndrome does have pulmonic ejection clicks and pulmonic murmurs as this infant had).

EXHIBIT B WILLIAM'S SYNDROME

(As seen from the above consultation report, this infant was uncooperative unless held by the mother. When immunizing infants, Mills would always ask the parent(s) if they would like to hold their child/infant during the procedure or merely be present to console them. Some parents are more fearful of the 'shots' so would leave the room. The Cinquegrana mother chose to be involved to help console Tori).

Textbook of Pediatric Nursing 6th Edition Marlow & Redding pg 85 " Parental presence reassures the child. Sitting or lying on parent's lap or being held in parent's arms provides security."

(As seen from the consultation, there was a faint variable systolic ejection click in the pulmonic area). These are seen in William's.

EXHIBIT C WILLIAM'S SYNDROME

PEDIATRIC NEWS NOVEMBER 1998

Strategy reduces cost of work-up

Three Criteria Key to Referral for Heart Murmur

By Timothy F. Kirn Sacramento Bureau

San Francisco--- The heart murmurs that the general pediatrician most needs to refer are those where there is also a click.....

They determined that nine of those potential predictors were significantly associated with disease. The nine predictors were: failure to thrive, dyspnea, sweating, pulse deficit, a murmur greater than 2, abnormal chest x ray, abnormal EKG click and a hyperactive precordium.....Of those nine, only click, abnormal EKG and hyperactive precordium had "statistically significant independent predictive power" on multiple regression analysis. .....They found that the overall prevalence of clinically significant heart disease on all the

murmur patients was almost 20%.

EXHIBIT D WILLIAM'S SYNDROME

NELSON TEXTBOOK OF PEDIATRICS
Fourteenth Edition BEHRMAN
page 1753 full section not printed
24.69 Idiopathic Hypercalcemia

.....

"Williams syndrome, or the elfin facies syndrome consists of a constellation of manifestations, of which hypercalcemia is an infrequent finding. The characteristic facial features include a small mandible.....Feeding problems and failure to thrive in the 1st year of life are usual.....The types of cardiac lesions found separately or together include supravalvular aortic stenosis,.....peripheral pulmonary stenosis.....
(there is no mention of microcephaly in this 2 paragraph section of Nelson Textbook of 1965 pages Dr Robert Eden not remembering what it was at the deposition or hearing had not reviewed any sources on William's syndrome but was presented these two paragraphs at the hearing. Dr Eden could not put together failure to thrive and microcephaly but it does occur in William's syndrome).Unless specifically looked for it is still a possible diagnosis for Tori.

EXHIBIT E WILLIAM'S SYNDROME
PEDIATRIC SECRETS
Richard A. Polin Mark F. Ditmar
page 129 Genetics
29. " Which syndromes are frequently associated with microcephaly? Macrocephaly?
Microcephaly the list is not complete here but those listed are exact as printed in the text at page 129

Column one	Column two
Intrauterine infections	Chromosomal abnormalities
Fetal alcohol syndrome	Cornelia de Lange syndrome
Fetal Aids embryopathy	Pena-Shokeir syndrome
Langer-Giedion syndrome	Williams syndrome

EXHIBIT F WILLIAM'S SYNDROME

A GASTROENTEROLOGIST'S APPROACH TO FAILURE TO THRIVE

Manuel Garcia Careaga, M.D. and John Alan Kerner, Jr, M.D.

"Failure to thrive (FTT) is a term used to describe growth failure in infants and young children .....FTT is merely a symptom observed by those monitoring a child's rate of growth, a descriptive term rather than a specific disease entity."..... We use FTT to describe the patient who is 3 years or younger whose growth falls below expected range for age."..... Red flags for inadequate growth from Table 1

1) Weight for age below the 5th percentile
2) .....
3) weight for length below the 5th percentile
4) shift of two or more growth percentiles during a 6 month period.
5) declining growth velocity over time.

Only those that have been found to meet the criteria for Tori being a FTT are listed- all but # 3. They are all indicative of FTT and any ONE can mean it exists.

" Head Circumference Most Affected"

....."Discussion:This pattern(head circumference < weight< height) suggests a primary problem in central nervous system development. .....This pattern is observed in most.....genetic malformation syndromes associated with microcephaly.....This pattern of growth deficiency underscores the importance of recording and following the head circumference in all children and especially those with abnormal growth."

EXHIBIT G WILLIAM'S SYNDROME

Linda Essex Day Care Director of Jack and Jill Day Care

Tori & Katelyn

The baby was constantly sick; spitting up, runny nose and diarrhea. .....

The parents would bring the baby in the very next day.....
If they questioned the mother she would give the staff a hard time.
When told the baby needed to see a doctor they would tell us that they had taken her. When the center nurse called the doctor's office, she was told they had not been there.
Tori appeared very samll compared to other children in her age group and extremely thin.....
She was often dirty and smelly; smelled of sour mild & urine
.....
Generally the baby was not dressed appropriately for the weather, In the winter they would frequently bring Tori in, in a light sweater and a thin blanket.
.....
The family was repeatedly behind in their payments even though they received pathways.

Linda Essex agreed to testify for Mills but was not allowed. She appeared in Superior Court for Mills and again was not allowed to testify. Linda Essex was also employed by DCYF State of R.I.

EXHIBIT H WILLIAM'S SYNDROME
December 1, 2000 From Keri V.
I came to know Dr Mills when my daughter A. was refused care from the pediatrician I had been taking her to.... I met Dr Mills who agreed to see A. in 1992. I was relieved because I had many unanswered questions regarding my daughter's health.....I was then referred to Boston Children's Hospital. I did not have any means of transportation at the time and Dr Mills offered to take us there.....she gave me her home phone number in case I needed her should an emergency arise. The care Dr Mills showed A was very special. If I had a question about A's health she took an interest in making sure I had it answered. ....I have the utmost respect and trust for Dr Mills and would not hesitate to have her treat A now and in the future. /s/ Keri V

EXHIBIT I WILLIAM'S SYNDROME
(placed on record below by Counsel McIntyre/Board)
is medical record prepared by Dr Newstead on T.C.)
Graham J. Newstead, M.D. Inc
300 Tollgate Road Suite 204
Warwick, Rhode Island 02886
Date 6/5/99 Problem List
Patient Name Tori Cinquegrana DOB 6/8/97
.....
..Other: xray Skull (low H.C.)
Full document not printed
Graham Newstead, M.D.,Inc
Cinquegrana, Tori L. 6-8-97
9-3-98
12/2/98
12/3/98
12/5/98
3/1/99
4/20/99 DNKA PE
6/8/99 DNKA PE
6/15/99 DNKA PE
7/20/99
8/18/99
8/18/99
the above were either visits to the doctor or no shows for Physical exams as noted

9/1/99 .....
.....(1) H.C. low Xra SK
(2) Hct Pb
(this notation on September 1st 1999 was one year after Tori started seeing Dr Newstead for her medical care. The notation at this visit reads: Head Circumference (HC) is low and to order a skull x-ray also to order a blood test and lead level)

Additional tests were necessary and they were not done on the

mother's first visit to Dr Newstead as she testified to.
EXHIBIT J WILLIAM'S SYNDROME
full document not printed but information is exact from original sent to Mills when Dr Buckley agreed to help Mills
Patricia B. Rompf, M.D.
Lucy P. Buckley, M.D.
235 PlainStreet
Providence R.I. 02906
401-421-4186
Name: Tori Cinquegrana
Please describe any type of symptoms or pain child has been experiencing "NOT GAINING WEIGHT"
.....
/s/ Deborah Cinquegrana Date 5-28-98

4) RECORD TRANSFER ISSUE

R.I.Gen Laws 5-37.3-4 Limitations and permitted disclosures (see Argument pgs 13-14)

5-37-5.1 Unprofessional conduct (10) Failure to furnish details of a patient's medical record to succeeding physicians.....upon proper request pursuant to 5-37.3-4 is the issue in this case. The Cinquegrana parents refused at all times to sign and return release forms as required by RIGL. The same was true for the Price family in March 2000 and under both circumstances McIntyre knew the releases were not signed. Rather than have the parents sign, he threatened Mills with suspension. Knowing she did not have the signatures, Mills feared if she released them, she would be fined as per RIGL 5-37-3.4. Mills released the records noting on the summary sheets that it was being done per order of Bruce W. McIntyre without signatures as required by RIGL.

Mills at all times sent release forms to patients that requested their children's records by written or verbal request. Mills would attach to the releases, free of charge, all immunization records on patients transferring to other physicians. In the

instant case of Cinquegrana, Mills called all shot dates to succeeding physician's nurse Sharon, gave same information to day care when they called, and attached complete shot record to release forms mailed to the parents on September 4, 1998. Rules and Regulations 11.2 (11.0 Services) (Exhibit A,B)a physician has thirty days from the date of receipt of signed releases to prepare and send medical records. Cinquegranas never mailed back the releases. On September 11, 1998, the mother called Mills complaining, " you are preventing the continuity of care on my children." (not common words for a parent to use) Mills simply told the mother to sign and return the releases. On the bottom of all releases, Mills writes the amount of the copying and transfer fee. It is also regulated by RIGL as $.25 per page under one hundred pages and $.10 per page over one hundred. The physician may also charge a $15.00 transfer fee. There is no mention of outstanding medical bills on the release forms. This was always a separate issue from the transfer of medical records. Medical services were billed and in particular for the Cinquegranas, a bill was prepared and sent on May 27, 1998. On Tori it was for three outstanding ten dollar copays -total thirty dollars and for Katelyn there were two visits in 1996 for which the insurance coverage on United Health Plans denied due to a " gap in the health coverage." This made the parents responsible for these payments. Mills asked for $45.00 for one visit and $55.00 for the other since the latter was on a weekend. This was far below the amount allowed on the insurance plan that the family was on in 1997 and 1998, and several copays were owed. (Exhibit C)

In violation of the statutory authority, McIntyre threatened Mills with suspension on December 2, 1998 if she did not release their complete medical records even though he knew the parents had not signed the releases. Mills wrote to the new physician, Dr Newstead on December 1, 1998 asking him to please have the parents sign the releases. Just after that McIntyre had the father sign an affidavit that he signed a/the releases at Mills' office on August 17,1998. McIntyre never

thought the mother's original handwritten complaint would be given Mills. Mills received this letter 12/12/98 even though it was written 9/11/98. The complaint typed on board stationary that McIntyre helped mother compose(per her own testimony) was given Mills 10/15/98. Original complaint reads, " she said she would let him sign the release when he came back with all the money. He did not go back cause he did not have all the money." Mother alleges that on 8/17/98 he did not sign the releases. [Barring for a moment the reason she alleges he did not sign, it is clear that the father alleges to have signed, mother alleges he did not sign. If the father's story is the correct one, then he was allowed to sign and a money issue did not bar him from signing and the mother is not credible. If mother's story is correct the father is not credible. When McIntyre was faced with this contradiction, he simply stated, " there must have been some confusion." (Exhibit D) 8/17/98 father came to office to question collection bills from Kent ER and Mills' 5/27/98 bill on each child. Before leaving he asked if he could have his "kids' records."Mills explained originals remain with office but she would have them copied. She asked him to read regulations posted on reception window and he did so .Mills could not take time out of work to count pages so could not give him releases with copying fees noted. Mills mailed the releases 9/4/98 just as she did other patients' releases the same day. The Cinquegranas were never returned; the others were. Lower court in error of law omits the issue of whether releases were signed or not, merely stating " he went to...office to sign a release..." The father did not know how records were transferred so could not have come to the office " to sign a release." Mills did agree to send the records, determined the copying fees, sent releases with the fees noted to their home. Neither parent ever signed releases. Mills was denied her rights by being forced to release confidential medical information without written request on a properly executed release form.Tpg 52 9/21/00 father testified he did not know the copy costs so he could not pay.Mother (Tpg 13 9/21/00 testified the copy costs were $.25 per page. Again

parents had contradictory testimony. Mother testified @ pg 13"she gave us one bill but she did not tell us the dates of the copays we owed and we were not just going to pay her when we did not know how much we owed." Tpg 51 father testified he was " shown a list of the copays." He knew the copays that were owed. Again, contradiction in parents'stories. Yet Tpg 7 she states " we never received a bill." She later alleged Mills called a collection agency and told them she could sue them if they did not pay(total bill $30 one child/$150 other)Mills only sent bills three months before she even knew they were going to leave her practice(one bill/each child in 4 years)Mills never called collections nor threatened to sue.(5/27/98 bills were itemized, the word copay was written out next to each date owed). The bills were part of record when board requested all the bills from years 1994 to1998 on family in year 2000 (most insurance companies do not keep the records for 6 years). T pg 22 mother testified, " Do you recall when you received that?"(refer to one bill) " No." Remember at pg 7 she testified she never received a bill(again pg 13 " Did she give you a copy of the outstanding bill?" " No, she did not." T pg 42 she is asked again if she can remember when she received bill and states, right after I told her we were switching pediatricians." No bills went out at any time the rest of that summer because the office was moving in late July(only 5/17/98)T pg 13 mother testified, "she said I refuse to send them to Dr Newstead until you pay the bills..."Father, T pg 50, " she said she would transfer the records to his office." T pg 46," And she told you she wouldn't transfer the records unless you paid the old bill?" " No, she said she was going to transfer the records, but she was going to let me know how much I owed her." Release forms stated what the cost for copying was.Parents again contradict themselves and mother contradicted herself.Issue was not unpaid past medical bills /copays but the signing of releases for transfer of records. Until September 8, 1998 it was RIGL that copying fees could be charged prior to records transfer.McIntyre submitted a proposed new law just prior to that date and it was signed by Secretary of

State and DOH 9/8/98 that physicians could no longer require a copying fee prior to records release. Laws were last changed in 1992 (Exhibit E) Regardless, according to RIGL on 9/4/98 when Cinquegranas received their release forms they were responsible for signing, returning and paying copying fees. RIGL 5-37-22 (c) the physician shall be reimbursed for reasonable expenses (as defined by the director pursuant to 23-1-41 incurred in connection with copying such medical records and pursuant to 23-1-48 as noted in section (d).

The mother states Mills told her she refused to send the records yet the father stated Mills said she would send them. The father states he was showed the copays that he owed yet the mother stated Mills never let her know the dates of the copays on the one bill that she @ pg 13 states she received but @ pg 7 she states she never received.

It is in violation of Mills' constitutional rights and in error of law for the Justice to have reviewed the certified record and to have concluded that this evidence was competent to show Mills was in violation of any records release laws or unprofessional conduct in the matter.. September 21, 2004 this mother told a Justice that the Medical Board told her never to pay Mills any money for copying or for outstanding medical bills. Again this is in complete violation of Mills' rights--- both RIGL and constitutional. She also testified that Mills never saw her daughter for medical care on a Sunday and that Mills never saw any patients on Sundays. Mills sent the Justice her call schedules and evidence that Mills saw her daughter on two Sundays for medical care. This mother is still making false allegations (and new ones) to this date. (Exhibit F) In March 2000, even after Mills was temporarily suspended for five months, McIntyre again coerced Mills into the release of confidential medical information on three more children in one family. This mother also did not sign releases and they were sent to her three times. Her oldest son's shot records were given by Mills directly to the prison where her son was at the time and they were once again attached to the

releases sent to the mother. (Exhibit G)

EXHIBIT A RECORD TRANSFER ISSUE

RULES AND REGULATION FOR THE LICENSURE AND DISCIPLINE OF PHYSICIANS (R5-37-MD/DO)

AS AMENDED September 1998

marked as RECEIVED Sep 08 1998 Secretary of State Public Info Center

Rule and Regulations

Section 11.0 Services

Medical Records

11.2 Medical records and medical bills may be requested by the patient of an authorized representative. All medical record requests to physicians shall be made in writing or upon receipt of a properly executed authorization for release of health care information. Reimbursement to the Physician for copying of medical records shall not exceed 25 cents per page for the first 100 pages. After 100 pages, the fee shall not exceed 10 cents per page. A maximum fee of $15.00 may be charged for retrieval regardless of the amount of time necessary to retrieve the record. A special handling fee of an additional $10.00 charged if records must be delivered to the patient or authorized representative within forty-eight (48) hours of the request.

The Physician may not require prior payment of charges for medical services as a condition for obtaining a copy of the medical record. The Physician may not require prepayment of charges for duplicating or retrieving records as a condition prior to fulfilling the patient's request for the medical record if the request is for the purpose of continuity of care.....

(This last line printed is the amended portion of the regulation as of September 8, 1998) When Mills sent the release forms to the Cinquegranas the old regulations applied because it was September 4, 1998 so copying fees were due at thee time of

record transfer. Despite this, the issue was not one of any finance dispute but simply Mills required the releases be signed and sent back.

(It is of interest to note, that no amends to these rules and regulations had taken place since November 1992)

EXHIBIT B RECORD TRANSFER ISSUE

OLD REGULATIONS

The old regulations read as follows: " Under the state regulations all requests for medical records must be made in writing preferably on a properly executed " authorization for release of health care information" form. Requests for records must be fulfilled within 30 days of receipt of request. Physician offices may not require payment of outstanding medical bills as a precondition of furnishing records for the transfer of care. However medical practices may require prepayment of the retrieval and copying charges....."

EXHIBIT C RECORD TRANSFER ISSUE

Pediatrics

Adolescent-Young Adult Medicine

Geraldine Mills, M.D.

Billing Date 05-27-98
Amount Due $30.00
Amount enclosed

Tori Cinquegrana		Blue Chip	Account number	
12-24-97	OV	Copay	$10.00	
1-6-98	OV	Copay	$10.00	
2-16-98	OV	Copay	$10.00	Balances 30.00

(this is the copy of the bill sent to Cinquegrana long before they told Mills they were leaving her practice, it listed the word copay three times but the mother testified she didn't know what the amounts were for)there are no copy fees on this bill because they are never part of the outstanding medical bills and there would not have been any as of the date of 5/27/98 because the parents had not told Mills they were leaving)Katelyn's medical bill dated the same day 5/27/98

was for copays as well as for two outstanding medical visits that were not covered by their health insurance due to" gap in enrollment"

At the bottom of that bill it reads as," For the 5-21-96 visit we will accept $445 if paid immediately and for 11-10-96 $55(due to Sun visit) if not paid as soon as possible full amounts will be due. Again no release of records fees noted on this bill

RELEASE OF RECORDS FORMS

Geraldine Mills, M.D.
65 Jefferson Blvd
Warwick, Rhode Island 02888

To: Dr Newstead 1st request mailed 9/4/98

Please release records on Katelyn Cinquegrana dob

All X	Office notes
labs	Consultation reports
x-ray reports	Immunization records
diagnostic testing	Other

Signature--------
relationship----------
$15 retrieval fee $.25 per page <100
$.10 per page >100
please sign + remit $25
will send to above within 15 days of receipt of request
Thank you, G Mills, M.D.

(Tori's release form stated the exact same information except the fee was $20)

Several other releases were sent the same day and returned- one returned on Justin 9/28/98, another on Jade 10/9/98 so it is very concerning that prior to the 30 days allowed (from the verbal request of August 17, 1998 it would be the 17th of September, a parent would be reporting Mills for not releasing medical records) from the receipt in writing and that the Medical Board would find this more than a frivolous complaint. The family had the immunization records so there

was no breach of " continuity of care," words known to this mother allegedly. Dr Newstead also knew how to contact Mills if he needed any further information and could not get the parents to sign for the records.

EXHIBIT D RECORD TRANSFER ISSUE

9/21/99 FAX DATE TO MILLS' COUNSEL

STATE OF RHODE ISLAND

DEPARTMENT OF HEALTH

Affidavit of

Brian Cinquegrana

.....

"I signed a release for both of my children."

/s/ Brian Cinquegrana

.....and sworn to before me this 1st day of DECEMBER 1998 Providence, Rhode Island.

/s/ Bruce W. McIntyre Notary Public

(Mills received this on 9/22/99 but it was faxed to her lawyer on 9/21/99 the very day Mills told her counsel he was dismissed unless he got her the list of Psychiatrist names and all complaints made against her to that date; RIGL is that all original handwritten complaints be forwarded upon receipt by the Board to the accused Physician. This complaint was NOT forwarded for 9 months, and it is Mills' belief it was only done in response to Mills' letter of the same date to the succeeding doctor informing him the parents had not yet signed the releases and mailed them back).

ON PLAIN STATIONARY Board of Medical Licensure

(on 9/11/98 D.C.) Sep 15 1998

" I called Dr Mills and left on her answering machine.....

.....

He could come back that night with the money & then shoe would let him sign the relase (she misspelled word) form he. He didn't go back."

(This document was dated 9/11/98 in penmanship written in above the original document by someone other than the mother- the D.C. also does not appear as her penmanship)

EXHIBIT E RECORD TRANSFER ISSUE
RULES AND REGULATIONS
FOR THE LICENSURE AND DISCIPLINE OF
PHYSICIANS (R5-MD/DO)
State of Rhode Island and Providence Plantations
Department of Health Board of Medical
Licensure and Discipline 1967
RECEIVED
Sep 08 1998 AS AMENDED:
Secretary of State (Dates listed from
Public Info.Center Dec 1967-Sep 1998)
(Last time prior to September 8, 1998 amended was November 1992)
EXHIBIT F RECORD TRANSFER ISSUE
PEDIATRIC ON CALL SCHEDULE-November 1996
SUN NOV 10 MILLS
Pediatric log book of patient medical visits for Nov 10, 1996
3 PM Sunday Katelyn Cinquegrana 2 yo check
PEDIATRIC ON CALL SCHEDULE-January 1996
SUN JAN 28 MILLS
Pediatric log book of patient medical visits for Jan 28,1996
2PM Katelyn Cinquegrana 18 mo check 826-7523
EXHIBIT G RECORD TRANSFER ISSUE
March 23, 2000
Ms. Nikki Samaras Deary
Chief Health Professions Regulation
Dear Ms Samaras Deary:

I am responding on behalf of my client, Dr Geraldine Mills, to your letter of March 7, 2000. .....Your letter referenced a two page handwritten document bearing the signature of Cathy Price. The document bears the ate of December 1, 1999 and is date stamped as having been received by the Board of Medical Licensure &Discipline on January 13, 2000. .....Ms Price does agree that she received copies of the releases from Dr Mills. It appears from Ms Price's complaint that she has not at any time, returned

signed releases permitting or directing that the medical records of Amanda, Seth, or Chais Price be forwarded to her or her designee. My client would confirm that as well as state that on at least three occasions in the past, she sent Ms Price releases to be signed.....Please note there is a typewritten statement at the bottom (meaning of releases from context of rest of paragraph) which clearly indicates that there is a charge for the records but that payment is not necessary in order to receive the records. This statement comports with the law and the rules of this Board and directly contradicts the statements of Ms Price.

Dr Mills has every right to require that signed releases be presented PRIOR to providing records.....
In deference to the Board, we are complying with your request even though the request itself does not comport with the law..
Very truly yours,
/s/ Paul Foster (Counsel for Mills)

5) EVALUATION ISSUE

R.I. Gen Laws 5-37-1.3 (10) reads, " to require a licensee to undergo a physical or psychiatric examination by a physician acceptable to the board, from a list provided to the licensee by the board, IF probable cause exists to believe that allegations of misconduct against a licensee are caused by an impairment which has directly affected the ability of the licensee to conduct his/her practice professionally. The investigating committee and the board my not discriminate on the basis of disability in the administration of the licensing program, nor subject qualified individuals with disabilities to any discrimination on the basis of disability in its complaint procedure. All decisions of the investigating committee and the board shall be on the allegation of unprofessional conduct and not due to probable cause of the conduct being related to the disability of the licensee."

The first issue has been addressed-temporary suspension due to the Director's issuance based upon "immediate danger to

the public." Mills as stated was not practicing after September 21, 1999 so could not be any danger to patients/public. Mills protected the public by determining a hazardous threat to human health and reporting it to the DEM.

Mills did house calls to see her patients after learning that there was contamination in the way of noxious vapors in the ambient air of her offices. On July 30, 1999, the one complainant adamantly refused Mills' offer to do a house call and refused to reschedule her appointment. She did not answer the secretary's calls that morning to reschedule or cancel in spite of admitting in testimony to having been, " home all morning." She then arrived at the office, was again informed about the concerns with the air quality in the office but stated she had to have a day care and camp form filled out or both her daughters would not be able to attend camp for the following day and day care the following week (requiring the forms for August 3rd). This mother then filed a complaint about the visit she alleged to have so urgently needed.

Since Mills could not enter the building due to an allergic reaction to the vapors in the ambient air, and this reaction occurred within just a few minutes, this is considered a " disability" of sorts. The conduct of waiting outside, of later doing house calls is " conduct related to the 'disability' of the licensee." It is not unprofessional conduct to protect oneself from vapors which make one ill. For any prolonged period of time these vapors were not healthy for anyone.

The expert testified one should " try to find other v[illegible]s." Mills had already purchased two pieces of property to[illegible]cost to her, " $200,000.00. They were both polluted pieces of property- one with an underground storage tank leak below it, the other with pesticide having been used within and high levels of formaldehyde from the use of paraformaldehyde in the hairdressing salon it formerly housed.

The summary suspension cannot be based upon the issue of contamination to the buildings and the conduct of seeing one family to sign forms when one reviews the RI Gen

Laws 5-37-1.3 (10). In fact, the only complaint regarding the building contamination was that of Joyce Brown. She testified @ pg 21 9/21/00, " it was a bizarre statement," referring to gasoline vapors and benzene in the office.

Joyce Brown testified that on the afternoon of the day of the office visit, July 30, 1999, she spoke to Mills by phone and Brown believed Mills sounded, " suicidal," and that she called the Medical Board and told them this. She conceded in testimony that she did not remember if she used that word but that she was worried about Mills' " mental" health. Review of Brown's complaint, shows that on the afternoon of that visit, as well as the following day, Brown was unable to reach Mills, as she alleged because Mills did not return her call made the afternoon of the visit. It is fact that this mother did not attempt to reach Mills until Sunday morning August 1, 1999, when she beeped Mills at 9:30 AM and Mills off call, out of state, immediately returned her call (telephone bill as evidence) to answer a question about a lab test on her youngest daughter. Mills could not have sounded " suicidal" in a phone conversation that per the mother's own testimony never took place. Had the Medical Board been notified of an alleged report of a Physician being suicidal on July 30, 1999, it is very concerning that the Board would not have contacted the doctor.

This complaint regarding the building contamination was not filed until September 1999 over one year after McIntyre sent his letter requiring Mills be " evaluated." Therefore, McIntyre wanted Mills evaluated based upon the one complaint filed at that time. Though he wrote to Mills that there were multiple complaints, these were not given to Mills if they in fact existed. On February 10, 1999, Mills' counsel wrote to McIntyre demanding all complaints be given to Mills on or before February 12, 1999 and none were forthcoming. The evaluation was therefore required based upon one patient complaint which was a medical record transfer issue. RI Gen Law so cited above requires such an evaluation if there is probable cause to believe an " impairment" has directly affected

the physician's ability to practice professionally. The fact that a physician could not release confidential health care information without a signature as required by RIGL cannot be inferred to be due to an " impairment." (see medical record transfer issue) This allegation was made upon unlawful procedure and in violation of constitutional or statutory provisions.

Again in violation of Mills' constitutional rights, McIntyre refused for one year to provide to Mills a list of physicians acceptable to the Board. This is in violation of RI Gen Law 5-37-2.1 and prevented Mills from being able to comply with the order as signed by McIntyre. McIntyre later stipulated that he did not give Mills this list of names until September 21, 1999, the very day and within just hours of Mills' making one final demand from her counsel for the list. McIntyre later stated Mills refused to go for the evaluation and that was his reason for not forwarding a list of doctors' names to Mills. McIntyre did give Mills one name of a Psychiatrist on June 30, 1999. Mills contacted him and learned he was a Child Psychiatrist. The inference that Mills did not want to have the evaluation as reason for not providing the list when Mills was given one name (she contacted him), does not follow logically from the facts in this case.(App Exhibits A,B,C). Mills made an appointment for the evaluation the day after receiving the list of names. The Psychiatrist Dr Leah Cullen told Mills she did not have an appointment available until October 5, 1999. Mills requested something sooner to which Dr Cullen told Mills, " there is no hurry, the politics of the situation is going to keep you out of business a long time." Mills was summarily suspended prior to having the evaluation (rescheduled within 10 days due to illness) and learned McIntyre had written to the Psychiatrist on October 1, 1999. The basis of his letter were fabrications and false allegations taken from the September 22, 1999 investigative meeting in which there was no stenographer's report. It also contained information from a call that McIntyre made to Mills at her private office on December

2, 1998, threatening her with suspension by 4 pm if she did not release medical records even though no releases had been signed by the parents. The letter to the Psychiatrist also stated that Mills was to not be able to see the medical reports/ records of the Psychiatrist but would only receive a report from the Board. This is gravely in violation of Mills' constitutional rights as a citizen of these United States to be afforded all opportunity to view her own mental health evaluations/medical records. This is the most egregious abuse of power displayed by McIntyre in this case. (Eval Exhibit A)

With the knowledge of McIntyre writing such false allegations to the Psychiatrist, his changing the testimony of his own witnesses in the writing of the briefs and reply briefs (on record in this case), and his own admissions as to not find a Dr Rogoff competent in the practice of Psychiatry it is no wonder that Mills is not able to accept another Board approved evaluation. (see Dr Rogoff eval preapproved) (Eval Exhibits B,C,D,E,F)

The burden of proof still remained with the Board. Throughout the actual hearing proceedings which did not begin until August 2000, no expert witness in the field of Psychiatry was produced to establish that Mills was mentally impaired/ had a " mental disorder," as the McIntyre/Board had advised the Florida Board in May 2000(prior to the hearing even beginning) and again did so to the NPDB in October 2002 (Eval Exhibit I)

The Rhode Island Medical Board of Licensure (Board) and Bruce W McIntyre throughout these proceedings were acting as one entity. During March 2002, Mills was represented by several counsel one of whom was John Harwood. McIntyre had written to Mills' counsel requesting that in order to reapply for reinstatement, she would have to be seen by a Psychiatrist at either the Massachusetts General or McClean Hospitals. The letter read that this could be done on an outpatient basis in this particular case. Mills was informed by her counsel to obtain the names of several Psychiatrists in Massachusetts, that these names would be forwarded to McIntyre/Board and that one

would be chosen for her to see. Mills obtained the names of four Psychiatrists willing to evaluate her. She was then told she could pick any one of them in that they were all reputable. Mills was seen by Jerome Rogoff, M.D. former Chief of Psychiatry at the Faulkner Hospital, Harvard professor, and Past President of the Massachusetts Psychiatric Society. Harwood was informed by McIntyre that he was " preapproved." Mills was found to be competent to practice Medicine, to have no psychopathology. This letter was sent directly to Harwood, he forwarded a copy to McIntyre. McIntyre later wrote that he never made this agreement; either he never notified the Board of it or stated it was never accepted by the Board but that he presented the Board with the idea. Harwood told Mills that he did make the agreement, that this was not merely an " exercise." Mills having already had five evaluations prior to this one had paid $8,000.00 out of pocket expense in mental health evaluations, all of which found her competent to practice and to have no psychopathology (Eval Exhibits C,G,H)

In October 2002 after having read the evaluations inclusive of the one done by Dr Rogoff, the Board/McIntyre/Pitassi wrote to the NPDB that Mills had a mental disorder. McIntyre told Mills subsequent counsel that he believed Rogoff was "not competent" to evaluate Mills.(Eval Exhibit D,H)

James Ellison, M.D. later wrote to Mills that Dr Rogoff was highly respected and was certainly competent in his Practice of Psychiatry (Ellison is the current President of the Mass Psychiatric Society). Mills received the name of Rogoff from the Chief of Psychiatry Massachusetts General Hospital Dr Ron Shouten and from Dr Tom Gutyheil of the Mass Mental Health Center (Fval Exhibit F).

At the time of the Hearing Mills had the results of her MMPI as well as the first evaluation but was not allowed to submit either as supporting evidence.

EVALUATION
EXHIBIT A EVALUATION
full document not printed it is 3 pages
DEPARTMENT OF HEALTH
October 1, 1999
Leah Oseas Cullen, M.D.
200 High Service Avenue
North Providence, R.I. 02904
Re: Geraldine Mills, M.D.
Dear Dr Cullen:
Thank you for agreeing to evaluate Dr Geraldine Mills and submit a report to the Board of Medical Licensure and Discipline. I have enclosed a W-9 for that you need to complete for payment for your services. It is understood that you are acting as the Board's consultant and you report will be furnished to the Board. Dr Mills can obtain a copy of this report from the Board only.....
/s/ Bruce W. McIntyre

Full documents not printed
EXHIBIT B EVALUATION
John B. Harwood,Esq. June 27, 2002
Re: Geraldine Mills, M.D. (DOB 7/4/52)
Dear Mr Harwood:
.....I find no psychiatric reason whatsoever that would interfere with the capacity and ability of Geraldine Mills, M.D. to practice medicine, including her specialty of pediatrics.
Sincerely,
/s/ Jerome Rogoff, M.D.
EXHIBIT C EVALUATION
MCKINNON & HARWOOD
September 16, 2002
Re: Geraldine Mills, M.D.
Dear Attorney McIntyre:
.....please let me know or Attorney Robert Craven

know if the most recent report of Dr Jerome Rogoff forwarded you can be used as a report acceptable to the Board of Medical Licensure and Discipline. I was under the impression that it met with your approval..

Very truly yours,

/s/ John B. Harwood

EXHIBIT D EVALUATION

May 30, 2003

Dear Attorney McIntyre:

As you know I represent Dr Geraldine Mills in connection with her administrative appeal.....

I understand that during 2002 you had some discussions with prior counsel for Dr Mills aimed at attempting to resolve this outstanding matter. I have obtained a partial copy of a letter you wrote to Attorney Robert Craven on March 29, 2002 suggesting that Dr Mills undergo an evaluation at either McLean Hospital or Massachusetts General Hospital. ....In any event after your March 29, 2002 letter I am informed that Dr Mills contacted Massachusetts General Hospital and was referred for evaluation to Dr Jerome Rogoff. A copy of Dr Rogoff's June 27, 2002 report has previously been provided to you. It is not clear to me whether you have ever made the Board aware of Dr Rogoff's report regarding his evaluation of Dr Mills. Despite the fact that Dr Mills saw Dr Rogoff on the recommendation of Dr Ronald Shouten of Massachusetts General, you indicated to me that you did not regard Dr Rogoff as competent to provide an evaluation. Dr Rogoff's credentials are set forth in this letter and I am sure you will agree that they are impressive. Moreover, you advised Attorney Craven that Massachusetts General was one of the places that would be acceptable to the Board and Dr Mills followed the referral she received from Massachusetts General.

At this time I am requesting a written explanation whether Dr Rogoff's evaluation has ever been brought to the attention of the Board and, if so, the reasons why the Board has rejected

Dr Rogoff;s evaluation.

Very truly yours,

/s/ Thomas M. Dickinson

EXHIBIT E EVALUATION

Document is 2 pages; full document not printed

March 29, 2002

Dear Mr Craven:

Thank you for speaking with Joseph G. Miller and me recently regarding your attempt to satisfy the Board.....

While the Board order did not specifically mandate an " in patient " evaluation this is the type of evaluation that the Board requires in cases similar to this. The Board has used the following facilities for these examinations: 1) McLean Hospital .....2) Massachusetts General Hospital

/s/Bruce McIntyre

EXHIBIT F EVALUATION

full document not printed

Massachusetts Psychiatric Society

Dear Attorney Dickinson:

In my capacity as president of the Massachusetts Psychiatric Society, I have received a call from Dr Geraldine Mills with an inquiry about one of our society's members, Dr Jerome Rogoff.....I would like to assure you, as I assured Dr Mills that Dr Rogoff is a member in excellent standing .....board certified in psychiatry and neurology with a specialty interest in forensic psychiatry. .....I hold both his character and his expertise in the highest regard.

Sincerely,

/s/James M. Ellison, MD MPH

President Massachusetts Psychiatric Society

full document 3 pages- not all printed

EXHIBIT G EVALUATION

State of Rhode Island

Providence, SC. Superior Court

Geraldine Mills, M.D.
Vs
Patricia Nolan, M.D.
Director Department of Health P01-4153

AFFIDAVIT

I, John Harwood, of the Firm of McKinnon & Harwood do hereby depose and state as follows:

1. I can swear to the facts herein of my own knowledge.

.....

3. On March 29, 2002, I along with Robert Craven received a two page letter from Attorney Bruce McIntyre, then Acting Chief Administrative Officer for the Board .....State of Rhode Island. This letter stated that the Board and Mr McIntyre required that Dr Mills be evaluated by a psychiatrist staffed at either the Massachusetts General or McLean Hospitals.

4. I was informed by Mr McIntyre and/or the Board that my client Dr Mills could give Robert Craven and myself a list of names of reputable Psychiatrists from the State of Massachusetts and that this list would be forwarded by us to Mr McIntyre and/or the Board so that Mr McIntyre/Board could chose one evaluator for Dr Mills to see.

5. On May 6,2002 Dr Mills forwarded to my office the following list of names of psychiatrists:

Dr Rogoff
Dr Katz
Dr Jenicke
Dr Barry Vogel

Attorney Robert Craven and I were informed by Mr McIntyre/Board that Dr Mills would proceed to see any one of those psychiatrists since they were all reputable.

6. On June 25,2002 Dr Mills was evaluated by Dr Jerome Rogoff and her found Dr Mills to be competent to practice medicine, including her field of Pediatrics,as well as his finding that Dr Mills had no psychopathology.

7.Dr Mills informed me that she chose Dr Rogoff because he

was referred to her by Drs Ron Shouten (Chief of Psychiatry at the Massachusetts General Hospital) and Tom Gutyheil (Director of the Massachusetts Mental Health Center).

8. I wrote to Mr McIntyre on September 16, 2002 that I was "under the impression" that this evaluation was PREAPPROVED by Mr McIntyre and/or the Board.

9. Prior to Dr Mills being evaluated by Dr Rogoff, she brought me four prior psychiatric evaluations that she had undergone due to this case as well as the results of a standardized test she took, known as the MMPI. I wrote to Robert Craven on May 22, 2002 that these medical examinations " substantiated her claim that she is in good physical and mental health to be reinstated to practice medicine in the State of Rhode Island. .....Robert Craven sent these to Mr McIntyre on June 5, 2002. They all state Dr Mills is competent and has no psychopathology whatsoever.

10. Evaluation by Dr Jerome Rogoff was sent directly to my office addressed to Attorney John Harwood (copy enclosed) .....

12. On September 13, 2002 Mr McIntyre sent a letter to me stating that neither the Board nor Mr McIntyre had ever approved that Dr Mills see this evaluator. I had always been " under the impression" that the evaluation had been approved; otherwise I would not have instructed my client to have the evaluation. I told my client it was " not just an exercise."

13. I then became aware that Mr McIntyre/Board wrote to the National Practitioner Data Bank on October 7, 2002 that Dr Mills had an alleged mental disorder. Attorney Robert Craven corresponded with Bruce McIntyre regarding that false allegation.

14.On October 17, 2002 Robert Craven wrote to Mr McIntyre, " My purpose in writing to you is to inquire as to the source of the diagnosis contained on page 2 of the attached report. (National Date Bank Adverse Action Report signed by Anthony Pitassi Board of Medical Licensure State of Rhode

Island)As you can see the report in part, predicates her suspension on her " psychological impairment or mental disorder." Since this information appears to have come from your office, and we are unaware of any adverse psychological diagnosis, could you please provide me with the source of this conclusion that was reported to the NPDB

15 Neither I nor Robert Craven ever received a response from Attorney McIntyre regarding the above report made by the Board too the NPDB.....

.....

Signed under the pains and penalties of perjury

/s/John B. Harwood

Dated: November 7, 2003

EXHIBIT H EVALUATION

August 19, 2002

Geraldine Mills, M.D.

191 Squantum Drive

Warwick,R.I. 02888

Dear Dr Mills:

I would like to thank you for your timely participation in the confidential evaluation with Richard Seely, M.D. in February 2002 of this year. As you are aware Dr Seely found no psychopathology which would require further participation with the Physicians Recovery Network. I have reviewed the material and concur with his assessment.

However, if we can be of further assistance with this or any other matter please feel free to contact my staff at (800) 888-8776.

Again, thank you for your cooperation.

Sincerely,

/s/ Raymond Pomm, M.D.

Raymond M. Pomm,M.D.

Medical Director

Consultant-Department of Health

Department of Business & Professional Regulation

EXHIBIT I EVALUATION
Full document not printed

National Practitioner Data Bank Process Date 10/07/2002
Page 2 of 3

.....Physician (MD) (010)
MD07341, RI
.....PEDIATRICS

RI Board of Medical Licensure
Summary or Emergency Suspension of License
(1139)

10/19/99
INDEFINITE

Basis for action: Unable to practice safely by reason of psychological impairment or mental disorder (F3)

(please note the following was sent to Florida Agency for Health Care Administration in response to McIntyre informing them on or about May 4, 2000 that Mills allegedly had some " mental impairment."

June 2, 2000
Dear Ms MacDonnell:

."..... The allegation that Dr Mills is a mentally impaired practitioner is entirely without merit. In point of fact the Rhode Island Board of Licensure has identified no expert witness who is qualified to testify on the subject of mental impairment where as we have two licensed psychiatrists who will testify that Dr Mills is not mentally impaired such that she is incapable of practicing medicine within the standards required in this state."

6) RHODE ISLAND HOSPITAL APPLICATION

This month Richard Greco, M.D. a Pediatrician in Rhode Island, present at Mills' hearing for privileges in March 1994, told Mills he saw absolutely no reason why she should have been kept off the staff in Pediatrics. He furthered that Dr Passero also felt that way (a Pulmonary/Allergy physician). The vote was 4 to 2 vote to deny Mills privileges.

May 18, 2000, Alfred Toselli, M.D. testified in deposition he, "personally kept Mills off staff at RI Hospital." The issue becomes whether the words of Dr Toselli are protected by immunity or not. With intent to harm and with malice, there is no immunity. It cannot be called anything but malice when a physician reports to another individual as Toselli did to the Hearing Director, Dr Cronan, that Mills was " psychotic." This is labeled malice because Dr Toselli reported to others as the Massachusetts Board that Mills had " good" qualifications in every category. Therefore it is of Mills' belief that keeping her off staff at RI Hospital but renewing her credentials every year at St Joseph Hospital was done for some other agenda. It may be a financial one in that the Pediatric Unit at St Joseph was not doing as well as it needed to. Admissions were down, and Toselli did not admit any of his own private patients even though he was the Chief of Pediatrics there. Mills not getting staff privileges at RI Hospital prevented Mills from taking direct care of her patients when they required more intensive care. (Exhibit A ,B,C)

RI Hospital's Dr John Cronan stated the reason Mills was not accepted was 1) she was a FMG foreign medical graduate. RI Hospital Hearing @ pg 35, " They begin with –I mean, the off shore medical school, Ross is an institution we don't deal with here..."This was discrimination for Dr Vincent Armenio a graduate of Ross Medical the very school Mills graduated from was placed on the very same staff Mills applied to. Armenio was accepted in 1992 one year prior to Mills' application and hearing, 2) that there were discrepancies

between the information Mills provided on her application and her actual credentials. RI Hospital Hearing @ pg 36 Attorney for the hospital Alexander states, " Why would someone say they graduated from an M.D. program at Case Western and then graduate from Ross University in Dominica is a very confusing entity. It is on the very first page." (RI Hospital Exhibits,D,E,F) This page of the application is on the certified record. The only date of graduation on that first page for an MD degree is Ross Medical School January 1984. Brad Carlson prepared a pre-application check list from Mills' application and from it he was able to determine that Mills obtained her MD from Ross.(Exhibit G) The hospital, Board/lower court cannot allege Mills " falsified a document in the practice of medicine," based upon something that does not exist. This is in grave error of law and clearly an erroneous conclusion. The Justice states, " upon review of the aforementioned exhibits, the Board concluded that there were several discrepancies between the information Dr Mills provided on her application for staff privileges to Rhode Island Hospital and her actual credentials," @ pg De3. This is an erroneous conclusion, in error of the law and had prejudiced Mills further after Mills was already discriminated against by the hospital (whether for her gender, religion or economic reason is the question) clearly not being the foreign school.The first page of the application does state under Education, "Case Western Reserve University 2 yrs PhD/MD (not Case Western Reserve University School of Medicine) There is no entry into the space of date of graduation. This means clearly Mills did not graduate from Case Western Reserve University (nor CWRU School of Medicine . Second there is no program known of that would produce a Medical Doctorate degree (MD degree) in two (2) years. Most if not all programs are four years. Third, Case Western Reserve University does not have a program for PhD/MD candidates but there is a program in the Medical School which allows one to obtain an MD/PhD (as the term is

usually written rather than PhD/MD), this program is a four year program.

The Justice furthers @ pg 3 DE, " Dr Mills' application indicated that she was enrolled in a " PhD/MD" program at Case Western Reserve University....." The application does not state this. The Justice once again omits information that is very important and that is the " 2 yrs" that Mills placed before the " PhD/MD." There is no " PhD/MD" program that one can be enrolled in for only two years and graduate with an MD degree nor is there any program that would allow one to obtain a PhD /MD or MD/PhD in two years. [For the sake of argument the Board, Justice could allege Mills was stating that she was only enrolled in a "PhD/MD" program for two years,(error by Justice in his omission of the "2yrs" to alter the meaning of the notation already shown), whereby there would be no way that Mills could have alleged to have gotten a four year MD degree in just two years].

The Webster definition of the word, " enrolled" means registered. Mills did have to " register" in the medical school (Exhibit H,I) but only matriculated in the graduate school in Pathology. In fact the memorandum from Thya Johnson clearly states those "exact" words, " enroll and register."

Mills completed the first full two years of Basic Sciences education curriculum (known as Committees) "enrolled and reigstered" in the CWRU School of Medicine but matriculated only in the Case Western Reserve University (not School of Medicine) graduate school of Pathology where she received a scholarship and stipend. This program was known as IBIS I and IBIS II in the graduate rosters. Mills had to do graduate research, take Pathology curriculum courses as well as seminar, and the entire first two years of Basic Sciences education with the CWRU medical students inclusive of two years of cadaver dissection (except for one Clinical Sciences course- first year following a patient through labor and delivery).

The RI Hospital application required letters from the

Deans of both Ross Medical and Case Western Reserve. Associate Dean Kirby of the CWRU School of Medicine(Exhibits J,K), three letters regarding the ethical and moral character of the applicant, and CV/resume. Mills submitted a minimum of twenty recommendation letters. All this information "should be" on the record below as well as the four parents' testimony from the hearing, Senior VP Mark Hough's(St Joseph) letter of recommendation as well as the March 24, 1994 letter of recommendation by Dr Philip Carling of Carney Hospital (deleted from the record below).

Mills completed and passed all finals in the Medical School curriculum. Because she was not matriculated as a medical student, she transferred credits to Ross to continue medical education as third/ fourth year clerkships [For sake of argument Mills would not have had to transfer to Ross at all if she alleged she was matriculated in a MD/PhD or straight MD program in the CWRU School of Medicine- she had completed all the requirements necessary to have continued her medical education at CWRU School of Medicine had she been originally admitted to the School of Medicine]. There were several other documents in addition to the pending -application checklist which clearly show RI Hospital knew Mills stated she graduated one Medical school-Ross. On 12/17/92, the day after Toselli told Mills her contract would not be renewed, Mills wrote to RI Hospital, " Dear Medical staff: I have considered further possibilities for ....work.....my best interests lie in beginning a private practice.....I therefore request privileges at RIH. Enclosed are copies of my Board eligibility, license, & insurance." Mills submitted a CV/resume letters from the Deans of both schools of Medicine and her RI license and that application, all verifying her education. There is no reason whatsoever this should have been labeled as "falsifying documents in the practice of medicine." A Pre-application as well only states Ross MD 1981-Jan 1984 dated 12/19/92 and RI Hospital numbered it pre-application #83. (ExhibitG109a,110a) It is violation of Mills' due process to omit this information.

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The next issue was that of the Justice/Board alleging Mills claimed to have been "admitted" to both the Yale and Brown medical residency programs. When John Cronan, M.D. told Mills she had according to him the " weakest application he had seen in years, " Mills submitted two letters she had received from Saint Raphael Hospital at Yale and Pawtucket Memorial at Brown (a RI Hospital affiliated program). These are part of the certified record below. Justice errs in describing them DE @ pg 3 as, "....letters of admission to both the Yale and Brown residency programs." Mills only submitted these because Cronan told Mills and again reiterated it at the hearing that , " the off-shore medical school Ross is an institution we don't deal with here..." Mills did want to point out the facts as they existed, that her credentials were good. Mills did complete two full years of Medical education at CWRU School of Medicine matriculated as a graduate student in Pathology but passed these two years which promoted all matriculated medical students to their third and fourth years of medical school. This is superior to a completely foreign education in the "eyes" of those American educated physicians who frown upon the foreign medical graduates. To receive letters from a Yale and Brown affiliated program in the National Resident Matching Program stating that they, "....were planning to rank you very highly in the matching program, we would very much like to have you as a house staff member at the Hospital of St Raphael," and " after careful deliberation our Residency Committee has selected you as one of our Match candidates...and hope that you will give it serious consideration," would be a positive addition to any application. [These letters were not sent to all applicants. In fact out of thousands of candidates, about eighty were interviewed at one program (about 12 candidates on 7 dates) and for each of those dates only a few such letters were sent. It is first an honor to even get an interview let alone a letter after the interview. Mills was told that letters should not have been sent by the hospitals

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because this would skew the program allowing those hospitals to have a better chance than they would otherwise, of getting the candidates they most wanted. Mills contacted another individual at her date of interview and learned he did not receive a letter.] Mills received a phone call of " acceptance" from the St Thomas Hospital in Akron Ohio. Mills wanted to remain in Ohio where she had lived since 1977. Mills was told that she should place her first choice third or fourth because that was the choice that would usually match. She placed St Thomas fourth on the list and got that choice. Mills placed Yale at the 7th position and Brown at the 8th position so that she would not " match" at them. Mills wanted to stay in Ohio. She felt if she placed the Yale and Brown programs any higher on the list she would get one of those positions because she received those letters.(Exhibits L,M,N)

The Justice errs in his decision as does the Board that Mills indicated on her application that she was "admitted to both the Yale and Brown medical residency programs." The second page of the application lists all intern and residency programs Mills attended and Yale and Brown were not among them. McIntyre at the Board hearing asked Mills the following @ T pg 116 12/7/00, " and it is on your CV that you went to Yale and Brown isn't it." Mills' CV/resume was part of her application, should be on the record below as such and does not state anywhere the names of Yale and Brown.(Exhibit O- CV-internships and residency)

Justice errs gravely when on November 6, 2003 he allowed Mills to submit one last memorandum so as to as he is paraphrased, ": allow you to feel that you were not prevented from submitting everything that you felt you needed to so that you were fairly represented. This last letter to the Justice discussed Mills' own testimony at the RI Hospital hearing in 1994, as to " I know it is slightly incorrect because of the way you are taking it is that I could have gone there." The Board took the words, " I know it is slightly incorrect, " out of the sentence as Mills testified it. This altered the meaning of this

sentence. Again omissions to prejudice Mills in violation of her constitutional rights to due process and a fair and just hearing and decision. Mills wrote a letter to the Florida Medical Board and in that letter writes very clearly that she wanted to stay in Ohio and did not want to go to the Yale or Brown residency programs because of location alone. Mills wrote that she was " accepted" as a Match candidate to the Yale and Brown programs. She did not write that she was " admitted." As stated, the entire letter's context was about her not wanting to return to New England and as already shown Mills placed these two programs far down on her matching list. In grave error the Board/Justice conclude that Mills allegedly stated she was "admitted" to these programs and since she was admitted to St Thomas, this would mean Mills was alleging she got into three programs in a Match that only allows a doctor one position if any at all. Many foreign graduates did not get positions.

Mills only agreed to being slightly incorrect because of the way that the Hearing committee (those voting against her) was misinterpreting her words. Accepted as a match candidate does not mean admitted to the program. The definition of the word acceptance is " receipt in favor of" and is synonymous with, "selected," and " highly ranked and we would very much like to have you." The record below clearly shows that in this letter Mills was not stating she got "admitted" to Yale and Brown but that she clearly did not want to go there. To take this to the extreme of placing it as Count I of her medical suspension more than five years later, to even consider it as " falsifying a document in the practice of Medicine is barring all Mills' rights to a fair and unbiased hearing, decision and ultimately her livelihood for now five years.

The last issue is Mills voluntarily leaving St Thomas and Winthrop. Mills was asked to stay on at St Thomas but to do another few months at the intern level. She was informed that this was very common at that hospital. The resident Cathy that told Mills this stated she had done this and so did the then Chief resident. Mills told them that she had found a new

position in Boston. Obviously Mills was then not offered a second year position there. (The letter cited above was to the Director of the Yale program that had "accepted "Mills the first year. Mills' father had take a stroke and she wanted now to return to New England. Mills had asked to leave the St Thomas program for her second year, in November just less than four months into the program. To claim that Mills did not voluntarily leave because a letter later stated she was not given a second year when she first told them she was leaving, is in error again of law, erroneous in its conclusion and violates Mills' rights again. Mills sent a letter to the Director of the Winthrop program stating she was not returning for her second year there. The former director even aided Mills in finding her second year at another location.

The issue when applying for privileges to a staff are whether there will be an economic asset to the hospital for the individual to be on staff and to determine whether the individual will conduct themselves appropriately. Mills had completed four years of work as a Pediatric House Officer with no misconduct at St Joseph Hospital when she applied for these privileges at RI Hospital. Mills tendered letters of recommendation from many members of the staff at St Joseph as well as from the senior VP that her work was of " quality care to her patients." Dr Toselli her Chief stated in deposition that, " she came highly recommended from her residency positions. However, he later slandered Mills " psychotic and incapable of the job"(though he had her working more than 50 hours overtime, including asking her to do call on Memorial Day weekend just a few months after the RI Hospital Hearing in 1994. Mills worked the call unsupervised as was her usual for 24 hours). (Exhibit P-call schedule)

EXHIBIT A RI HOSPITAL APPLICATION
Deposition May 18, 2000 Alfred Toselli, M.D.
Page 38 lines 18-24 A. " She had already a license in RhodeIsland. If I recommended her to Rhode Island Hospital

she would have been admitted to the staff.
Q. So, is it your testimony that you're the reason that she wasn't admitted to Rhode Island Hospital?
A. YES
(Mills received letters from all other doctors working with her daily as well as specialists and nurses, ER physicians).
Page 36
Q Isn't it a fact that you recommended her for licensure in the State of Massachusetts?
A If I did I don't remember it.
(T pg 121 RI Hearing Mills' counsel ".....I will object to it on the grounds of either Dr Cronan who could have been called as a witness here ....." after asking Mills if she " attempted to mislead them," the RI transcript was entered as State's Ex#13)
RI Hospital Hearing transcript 3/31/94 pg 5 lines 24-25
A. " He said you approached psychotic behavior. I'm not sure what that means." Dr Conan testifying what Dr Toselli allegedly told him on November 16, 1993 in the alleged only one conversation they had.
page 9 lines 10- 25 Question posed to Dr John J. Cronan
Q Did Dr Toselli give you a reason for not sending a letter?
A Doctor Toselli when I called him he stated that he was well aware of Doctor Mills. .....he proceeded to tell me that he felt she was incapable of doing the job. His words were she approached quote psychotic unquote behavior. He felt she was also extremely litigious and had showed evidence of suing numerous other people. He told me her brother is a lawyer and has provided her easy access to the legal system. He wanted me to know this was the first time he had ever refused to send a letter of recommendation, frankly stated I would not hire her again and would not employ her in this office."
Deposition May 18, 2000
Alfred Toselli, M.D.
Lines 14-19 page
Q. Did you ever use the term psychotic with regard to Dr Mills?

A. I don't honestly remember using it, but if----- if somebody says I did then fine, but I don't remember honestly using that word, psychotic.

EXHIBIT B RI HOSPITAL APPLICATION
COMMONWEALTH OF MASSACHUSETTS
BOARD OF REGISTRATION IN MEDICINE
TEN WEST STREET
BOSTON, MASSACHUSETTS 02111

EVALUATOR, PLEASE RETURN DIRECTLY TO THE BOARD

DR Geraldine Mills was at St Joseph Hospital from July 1989 to present. During that time she was In House Staff Pediatrician.

II Evaluation

She has listed your name as one who has requisite knowledge through recent observation of her current clinical competence, ethical character and ability to work cooperatively with others.....

Basic medical knowledge
Professional Judgment
Sense of Responsibility
Ethical conduct
Competence and skill
Cooperativeness ,ability to work with others
Appearance
History and Physical exam taking
Record keeping
case presentations
physician-patient relationship
ability to understand and speak English
participating in medical staff affairs

(The categories for rating these were POOR FAIR GOOD SUPERIOR)

Both Mark Hough and Dr Alfred Toselli checked the GOOD column in all

For the sake of redundancy in printing the above evaluations it is noted that Senior VP of St Joseph Hospital

wrote in section IV.....we would appreciate such comments from you.....".DR Mills is committed to providing quality care to her patients."
V. The above report is based on
1. Close personal observation
2. General Impression
3 A composite of previous evaluations by other physicians
4 other
Mark Hough VP signed 1) for non clinical checked
for 3) for clinical items checked
Dr Toselli checked number (1)
/s/ Mark Hough Senior VP Not dated
/s/ Alfred Toselli Dated 3/10/93
Alfred Toselli, M.D. Director of Pediatrics
(Dr Toselli signed another form again the following year 11/7/94 when Mills applied this time for a temporary license [they had not yet given her a decision on her application for full])
EXHIBIT C RI HOSPITAL APPLICATION

Geraldine Mills, M.D.
July 26, 1994

Ewards & Angell

Dear Sirs and Madames:
I Geraldine Mills, M.D. am voluntarily withdrawing my application for staff privileges at Rhode Island Hospital to be effective immediately. Do not in any way consider my application.
Sincerely yours, Geraldine Mills, M.D.

/s/ Received personally on July 26, 1994 by Rosemary Healey
(same document signed for by Milton Hamolsky, M.D. Board of Medical Licensure, Attorney Ken Arnold of RI Hospital, Attorney Stephen Mills for Dr Mills)

EXHIBIT D RI HOSPITAL APPLICATION
RI Hospital Hearing transcript page 35
Q. .....where are the red flags?
A. They begin with—I mean----- the off shore medical school Ross is an institution we DON"T DEAL WITH HERE;.....
This is Dr Cronan's testimony
Rhode Island Hospital
Department of Pediatrics
593 Eddy Street
Providence, Rhode Island 02903

June 26, 1992

Dear Colleague:
It is my pleasure to announce the addition of the following faculty members to the Department of Pediatrics starting July 1, 1992:
VINCENT A. ARMENIO, M.D.
Dr Armenio will join the Division of Pediatric Hematology/Oncology. He is a GRADUATE OF ROSS UNIVERSITY WEST INDIES .....
/s/ William Oh. M.D.
Pediatrician in Chief on letterhead
Professor and Chairman
Department of Pediatrics

EXHIBIT E RI HOSPITAL APPLICATION
PAGE LINES 13- 20 HEARING
A. " That's a very confusing entity. I mean why someone would say they GRADUATED from an M.D. program at Case Western and then GRADUATE from Ross Univesrity in Dominica is a very confusing fact."
Mr Alexander (Jeffrey Alexander Counsel for RI Hospital) States at lines 18-19
"It is on the very first page of the application....."
EXHIBIT F
RI HOSPITAL APPLICATION PAGES 1 & 2

this is only some information from the first page but is accurate as to what is printed

Identifying information Geraldine Mills, M.D.

		Degree
predoctoral education	University of Rhode Island Kingston RI	BS Zoo
		Date graduated 1976
Doctoral education	Case Western Reserve University	2YRS PhD/MD
		Date Graduated "None"
Ross University Sch of Medicine		MD
		Jan 1984

(the computer did not place a small line under date graduated for CWRU so a large line appeared- the word " none" in quotes did not appear on the application- there was a line through the date graduated indicating there was no date of graduation from CWRU)

Page 2 of application

Internship

July 1984-July 1985 Internal Medicine

St Thomas Hospital Akron Ohio

July 1985-July 1986 Internal Medicine

Carney Hospital Dorchester Ave Boston

July 1987-July 1988 Pediatrics

Winthrop Univ Hospital Mineola LI NY

Residency

July 1988-July 1989 Pediatrics

Medical College of Pennsylvania Henry Ave Phila PA

(the above information noted on page 2 is not the entire page form though all information is accurate)

EXHIBIT G RI HOSPITAL APPLICATION
Applicant Name Geraldine Mills, M.D. Dept. Pediatrics
Anticipated start date: July 1993

Rhode Island Hospital Staff Association
Pending Application Check Sheet

ITEM	DATE/COMMENTS
1. Completed application received from applicant	½8/93
2. Information required on Application	
A. Rhode Island License-Number 7341	Expiration date 01/01/94
B. Malpractice Insurance	MM JUA-RI
C. Letters of Verification	
i. 3 from Application	Kim Coleman
	Dr Pella
	Dr Martin
ii. Medical School	Ross University

.....

/s/ Brad Carlson 1/28/93
/s/Brad Carlson 10/19/93

EXHIBIT H RI APPLICATION
August 14, 1978
MEMORANDUM
TO: Graduate Students enrolling in Phase II Subject Committee
FROM: Thya Johnson
Assistant to the Associate Dean for Medical Education
As you know, in order to be enrolled in Subject Committee work in the Medical School you must not only register officially through the Graduate School (IBIS 403, 9 Cr. Hrs.) But must also make your presence known and complete certain registration procedures in the School of Medicine.....You will be asked to complete a Medical School Registration form and pay the Syllabus Fee of $125.00. Best wishes for the year ahead.

EXHIBIT I RI HOSPITAL APPLICATION
SCHOOL OF MEDICINE
PHASE I
PROPOSED SCHEDULE for 1978-79

Registration August 23, Tuesday 1:00
Musculoskeletal Committee August 24 —September 24
(the entire year's schedule printed out and completed for both years one and two of the medical school curriculum by Mills with successful completion of the final exams- equivalent to National Board Parts I on June 12, and 13 1979 dates as shown at the bottom of this proposed schedule)

Mills was enrolled and registered in the Medical School but not matriculated in the Medical School and therefore transferred her credits to Ross Medical School.

EXHIBITS J AND K RI HOSPITAL APPLICATION
(the following letters of verification were sent directly from the offices of the following doctors to Brad Carlson at RI Hospital- the application was not complete until received
From Case Western Reserve University School of Medicine
July 2, 1986
Dear Sir/Madam:

Re: Geraldine M. Goldman, M.D.

Geraldine M. Goldman, M.D. did take core academic classes as a graduate student that were the same classes as the medical students participated in during the first two years.

Sincerely.
/s/ Albert C. Kirby
Albert C. Kirby, PhD
Associate Dean for Admissions and Student Affairs
this document is not the full printed but the information presented is accurate from the original document

from Ross University School of Medicine
July 22, 1986
Re: Geraldine M. Goldman, M.D.
Please be advised that Dr Geraldine Goldman was accepted into Ross University in October 1981 as a transfer student

from Case Western Reserve University.
Dr Goldman was given transfer credit rather than advanced standing for her course work at Case Western Reserve University based in part on representations made by Dr Kenneth A. Scott, Associate Dean for Medical Education at Case Western Reserve University School of Medicine. Dr Scott represented that Dr Goldman's course of study as a PhD candidate at Case Western Reserve University was taken with medical students and identical to the first two years of medical school at the University.

.....

The majority of the clinical component of Dr Goldman.s medical education was taken at hospitals affiliated with Case Western Reserve University. These clerkships were taken under the auspices of Ross University.....
Sincerely,
/s/ James E. Cassidy
James E. Cassidy D.M.D.,Dr.P.H.
President
Sworn to before me this 22 day of July 1986
/s/Neal S. Simon

EXHIBIT L RI HOSPITAL APPLICATION
NATIONAL RESIDENT MATCHING PROGRAM
page 1 of 2
Applicant Rank Order List Confirmation

GOLDMAN GERALDINE M	SCHOOL	APPLICANT CODE
	95	409460

Match Notification code 8579

NEWTON WELLESLEY-MASS	INTERNAL MEDICINE
MOUNT AUBURN HOSP-MASS	
CWRU MOUNT SINAI-OHIO	
ST THOMAS HOSPITAL-OHIO	
WORCESTER MEM HOSP-MA	
NEW ROCHELLE HOSP NY	

HOSP ST RAPHAEL-CONN
BROWN U-MEMORIALHOSP RI
ROGER WILLIAMS GEN RI
UMDNJ RUTGERS MED SCHOOL
CWRU ST LUKES HOSP OHIO

And there is a second page

(This list was made out after January 1984 for the start of internships beginning July 1984)

Prior to completion of this list Mills received the following letters from St Raphael and Pawtucket Memorial Hospitals

EXHIBIT M RI HOSPITAL APPLICATION

HOSPITAL OF SAINT RAPHAEL
New Haven, Connecticut
Norman J. Marieb,M.D.
December 15, 1983

Dear Ms Goldman:

We appreciate your taking the time to visit the Hospital of St Raphael. We certainly hope that you enjoyed the time spent.....

All those who came in contact with you during your visit were highly impressed with you past record, letters of recommendation and the way that you conducted yourself personally during the interview time. We feel that you would add to our program and that we can offer you the very best educational program available at a community hospital anywhere. Because of your past performance We plan to rank you very highly in the matching program. We would very much like to have you as a house staff member at the Hospital at St Raphael.

Very truly yours,
/s/ Norman Marieb
Norman J. Marieb, M.D.
Chairman Department of Medicine

THE MEMORIAL HOSPITAL
Pawtucket Rhode Island

January 4, 1983

Dear Ms Goldman:

We are pleased to inform you that after careful deliberation our Residency Committee has selected you as one of our Match candidates. .....and hope you will give it serious consideration.

Yours truly,

/s/Breyson Ley

Breyson Ley

Assistant Professor

Brown University

(Content is accurate but these letters are not reproduced in full)

EXHIBIT N RI HOSPITAL APPLICATION

(Though as seen in Exhibit O below, Mills did not do go to the Yale or Brown program, placing them 7th and 8th so she would not get into them, preferring to stay in Ohio, she did do a one month rotation (while Intern in Pediatrics at Winthrop University Hospital LI, NY) at Rhode Island Hospital in the Adult Nutrition and Support Service obtaining credit towards her Pediatric specialty rotation Gastroenterology).

Rhode Island Hospital/Providence Rhode Island 02903

May 4, 1988

Geraldine Goldman, M.D.

Dear Dr: Goldman:

I have the honor to inform you that at the meeting of the Board of Trustees of the Rhode Island Hospital held today Wednesday May 4, 1988, you were appointed as a : Resident in the Department of Surgery Division of Metabolism and Nutrition for the period of April 7, 1988 to April 30,1988.....

Sincerely yours,

/s/Murray S. Danforth, Jr. Secretary

Upon completion of her Pediatric and Internal Medicine training Mills requested that Edwin Forman, M.D. of Rhode Island Hospital allow her to rotate through the

various specialty wards at the Hasbro Children's Hospital. Mills was working at St Joseph Hospital at that time under Dr Alfred Toselli. Though he alleges Mills was " incapable of doing the job," she was working up to 100 hours per week, so though she started in the Hematology division, she could not do all the rotations at RI Hospital, as she had requested and been so honored to have received.

Rhode Island Hospital
Department of Pediatrics
Division of Pediatric Hematology/Oncology
October 16, 1991
Dear Dr Mills:
I am in receipt of your letter of September 17, expressing a desire to arrange for some form of continuing education.....
I would be glad to see what kind of a program can be set up.
I look forward to hearing from you.
Sincerely,
/s/Edwin N. Forman, M.D. Director

Mills, under her marital name at the time, Goldman, was also employed by RI Hospital during the early 1970's as a Histopathology technician. This training and work, she believes helped in her acceptance to CWRU graduate school in Pathology. (See Resume/CV)

With these three clear associations with RI Hospital and a recommendation from the then Director of Clinical Chemistry Lab, Dr Horace F. Martin and a letter on her good ethical and moral character from surgeon at RI Hospital, Dr Norbert Fleisig it is very suspect as to what the agenda behind her denial really was.

EXHIBIT O RI HOSPITAL APPLICATION

(the following resume is two pages, the entire document is not printed here but what pertains to the alleged misrepresentations as concluded by the Board/lower court in

error are shown)
RESUME/CV
EDUCATION .....
Case Western Reserve University, Cleveland Ohio
Graduate School in Pathology(full scholarship and stipend per month)
Case Western Reserve University School of Medicine-two years of Basic Sciences concurrently with Pathology Program- was research assistant at Cleveland Clinic and Cleveland Metro General Hospital.....
.....
University of Dominica (now Ross University)School of Medicine for Physical Diagnosis with Clinical Clerkships supervised entirely within U.S. hospitals
EMPLOYMENT HISTORY
Histology technician- Rhode Island Hospital (1972)
.....
Internship- Internal Medicine at St Thomas Hospital, Akron Ohio; affiliate of Northeast Ohio University School of Medicine (similar to fifth pathway)(1984)
Internship-Internal Medicine at Carney Hospital Boston MA;affiliate of Boston University School of Medicine (1985)
Internship-Pediatrics at Stonybrook; affiliate of Winthrop University Hospital, LI NY (1987)
Residency-Pediatrics at Medical College of Pennsylvania; St Christopher's and Children's Hospital of Philadelphia (1988)
ELECTIVES
Pediatrics-Akron Children's Hospital,Akroon Oh
Pediatrics-Boston Children's Hosptal Boston MA(CCHP)
Pediatrics GI and Adult Nutrition Support Service-Rhode Island Hospital; affiliates Brown University School of Medicine
(There is no Yale or Brown Residency or Internship listed and only 2 years of Medical School (MD program)is listed at Case Western Reserve School of Medicine and as concurrent with

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Pathology. Mills never alleged she graduated from two medical schools- she had to go to Ross even with passing the finals for the first two years of the medical program at Case, which promotes all medical students to third year, because she was not " matriculated " as a medical student).

EXHIBIT P RI HOSPITAL APPLICATION
Physician Schedule Service Pediatrics Unit Fatima & OLP Clinic
Month of: DECEMBER 1992

.....

Sun13 Mon14Tues15Wed16Thurs17Fri18Sat19
Mills Mills Mills Mills
Mills Mills Mills
Mills

(this means Mills at clinics 10AM to 8 PM Monday Mills at Fatima Unit Wednesday 7:30AM until Thursday 5 pm and Friday 7:30 AM until Sunday 8AM)
Line 1 days at OLF
Line 2 Nights OLF
Line 3 Clinics OLP (Our Lady of Providence and Our Lady of Fatima)

EXHIBIT G RI HOSPITAL APPLICATION
RI Medical license application page 2
EDUCATION please print information below

Name and Location	Years Attended	Dates from to	Date of Graduation	Degree
Premedical colleges				
Univ of RI	5 ½	1970 76	1976	High distinct Magna cum laude Zoo-Bio-Chem
Case Western Reserve	2	1977 79	--------	graduate stud Not complete PhD

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Medical Schools
Ross University 4 yrs 1981,1982 Jan 84 MD
1983,1984
PRE-APPLICATION APPOINTMENT
to the STAFF
ASSOCIATION RHODE ISLAND HOSPITAL
Individual's Name: Geraldine Mills, M.D. Pre-Application #83
(this was completed by someone at RI Hospital and the rest of application completed by Dr Mills)
.....
EDUCATION
Ross University MD 1981 to Jan 1984 (date graduated)
New York
Case Western Reserve
Cleveland Ohio Graduate /Pathology 1977to 1979

EXHIBIT H DCYF
March 2001 Special Assistant Attorney General Anne Turilli's motion to dismiss, objection to Appellant's complaint and request to dismiss Bruce McIntyre from suit for Attorney General Sheldon Whitehouse @ pg 2 Factual Background " Mills then apparently retaliated against one of the parent complainants by calling the DCYF child abuse hotline concerning one of the complainant's four children who was approximately eighteen years of age at the time." (The case is still pending in the lower court 4 years after filed)

Dr Eden Testimony (T pg 82 10/19/00) " Yes, I would stress that if she believed them to be caused by non-accidental means, yes, then there would be an obligation." (to report to DCYF)
(T pg 83-84 10/19/00) "....if the patient is not in your care how can the doctor make an examination....?" ".....I presume the state would have to....."
" What if a child was no longer in your care?" " .....I haven't had that happen to me....."

(Deposition pg 85 6/1/00) "....I couldn't correlate all the specific dates with the past records...." "Isn't it your testimony because in large part the records are not decipherable....?""Yes I couldn't see and I didn't find entries...."(D pg 79) " I located one fracture for Sarah 10/24/91, fracture of the right radius...." (Dpg 81) " ....the only one I recall seeing but it's hard to decipher some of the handwriting admittedly..."
(D pg 84 6/1/00) " Is it your testimony doctor, that the dates set forth in this transcript you have not been able to determine to be true or inaccurate based upon an inability to read the record?" "Based on an inability to read the record, I'd say yes."(T pg 48 10/19/00) " How do you then offer these opinions today doctor if there is portions of the records that you can't read and understand?" " Simply because there is enough I can understand to render an opinion...." " You can exclude whatever else may be in the record? Is that your testimony?" " To render my opinion I can exclude what I was not able to read, yes."

SANCTIONS

The Board held that an indefinite suspension of Mills' medical license was an appropriate sanction until she submits to physical and psychiatric examinations conducted by medical professionals pre-approved by the Board. The court cited Shakin v. Board of Medical Examiners 254 Cal. App.2d 102(Cal App.2nd Dist, 1967) " ....such interference will only be sanctioned when there is an arbitrary, capricious, or patently abusive exercise of discretion." Court's decision @pg 33 reads, " during oral arguments before this court, the Appellant requested that this court modify the sanction to include a provision that a psychiatrist of the Appellant's own choosing be permitted to attend the psychiatric examination

the Board is requiring her to undergo before she can be considered for reinstatement." The court found this request inappropriate and that it would be a substitution of its judgment in place of the Board's as to the conditions of Appellant's reinstatement.

The court omits the facts that 1) the Psychiatrist requested by Appellant to be present was the one already pre-approved by the Board, Dr Jerome Rogoff (from a list of four Massachusetts psychiatrists provided to McIntyre) not " chosen" by Mills, 2) McIntyre had written to Dr Cullen that Mills would not be allowed to see her own mental health records (fabrications and false allegations were submitted by McIntyre to her in writing October 1, 1999) 3) Mills was not given a list of names of pre-approved Psychiatrists for one year and has never been given a list of medical physicians by the Board 4) McIntyre and/or Board reviewed all six evaluations, then made an inaccurate report to the National Practitioner's Data Bank (NPDB) on October 7, 2002 that Mills has a " mental disorder." This is arbitrary, capricious, and patently abusive exercise of discretion. Former Attorney General Jeffrey Pine (former counsel for Mills worked from his office) told Mills regarding McIntyre, " he is abusing his powers."

Appellant has been "examined" repeatedly by Drs Jaeckle in Dallas, Seely in Florida for Dr Raymond Pomm Director of Physicians Resource Network, Rogoff Past President of the Massachusetts Psychiatric Society and Harvard affiliated Psychiatrist, Stewart and his associate Harrop in Rhode Island as well as by Psychologist Goodwin who administered the MMPI to Mills. All concur that Mills is competent to practice medicine, in particular her field of Pediatrics. Appellant has expressed her hesitation to be examined by another Psychiatrist under the control of the Board because of her belief that the Board and its prosecuting counsel have abused their power and discretion repeatedly. After having agreed upon the evaluation by a reputable

psychiatrist with referral from the Chief of Psychiatry at the Massachusetts General, Dr Jerome Rogoff and his impressive qualifications, the Board/McIntyre (if McIntyre submitted the evaluation to the Board) apparently does not find him acceptable or qualified to evaluate Mills. This only lends further credence to Mills' concerns about subjecting herself to examination by any psychiatrist under Board control.

If, despite the evidence from the Board's own expert witness and that of the Browns which do grave injustice to Mills' reputation and character, what can she expect from a psychiatrist who serves at the Board's discretion? In fact, Mills attempted attending the Physicians' Health Committee October 9, 2002 but learned that only two Psychiatrists from RI Hospital would be in attendance, certainly a conflict of interest in that it was RI Hospital's own Dr John Cronan that uttered the word " psychotic." Two days prior to that scheduled meeting to review all of Mills' evaluations, the Board/McIntyre/Pitassi made the false report to the NPDB.

A careful review of the evidence and the Board's findings reveals that the Board in essence, presumed Mills to be unfit to practice and then shaped a decision that would permit the Board to subject her to psychiatric examination. Her reluctance is only to subject herself to examination at the Board's direction. She has certainly shown that she is willing to be examined by all others, not at her own choosing. Her response to the RI Medical Board is a reasonable and sensible one based upon the outrageous conduct to which she has been subjected by the prosecuting authority and previously by her superior Dr Alfred Toselli, and RI Hospital credentials director Dr John J. Cronan.

On September 16, 2003, Counsel for Mills wrote to McIntyre, " There is ample authority for persons who are subject to such examinations being permitted to have their own attorneys of chosen physicians present. Given the nature of the examination and Dr Rogoff's eminence in his field, I cannot think of any reason why the Board would object to this

condition." Mills did not " choose" any of the Psychiatrists that she was evaluated by but was referred to them. She would be willing to be evaluated by another per-approved by the Board with any one of those that she has already seen in attendance. This decision is only based upon the conduct of the Board/McIntyre.

This sort of controversy should have been subject to direct judicial review of the board's ruling under the APA. The need to exhaust all administrative remedies within the agency in this instant case was futile since the agency was not going to correct its errors (to avoid the necessity of judicial involvement). Schwartz, Administrative Law 8.33 (3d ed.1991). There was no relief possible from the board's ruling when Mills was denied reopening for evidence on her motion of January 30, 2001. It was not a motion for simply " establishing the character and professionalism of the Respondent" as the Board is quoted from a May 1, 2001 Interim Order. This date presents further question in that Mills submitted a Writ of Mandamus on April 20th to obtain an answer to her motion of January 30th. She did not submit an omnibus form so the motion was not addressed. However, Counsel for the Board, Assistant Attorney General Anne Turilli, sent Mills a " Defendant's Objection to Motion for a Writ of Mandamus dated May 3rd. Mills did not submit her corrected motion with omnibus form until May 4th 2001 which would preclude its being answered the day before it was even submitted. It is Mills' belief that the Interim Order was post dated by the Board to give the appearance that the motion by Mills for a writ was moot as Turilli wrote, " on the ground that the Administrative Hearing Panel already issued a decision thereon." Additionally, the motion was to present to the Hearing panel the evidence " necessary to determine the facts on the record " (to fulfill the duty of the Administrative Hearing Officer AHO). Appellant concretely felt the adverse effects from the agency's determination. Relief from the final order would not provide an adequate remedy for injuries

already sustained by the order to immediately cease seeing patients, September 22, 1999, prior to any preliminary , procedural or intermediate agency action APA 42-35-15 (a). Requests for judicial enforcement are to be taken up by Superior court on an accelerated basis 28-7-32 and per R.I.G.L. 5-37-7©) " ....subject to review in superior court pursuant to the APA chapter 35 of title 42..."any appeal taken.... shall have precedence on the calendar and shall be considered an emergency matter and shall be heard in any event not later than thirty(30) days from the date of appeal when practicable." Appeal briefs were submitted in July 2003 but not heard until November 2003; the denial for writ of certiorari (submitted December 2003) being so ordered September 23, 2004. The Hearing as per RIGL 5-37-8 " Grounds for Discipline without a Hearing," must be held within ten (10) days after such suspension has occurred. This did not happen until August 2000, ten months later. October 31, 2004 the Board was quoted in the Providence Journal News as stating, " a new law has been passed wherein the protracted course of these hearings will be averted by now having hearing officers present rather than the full board." Appellant's hearing always had a hearing officer present without a full board. In fact, many delays stretching the hearing to five months was due to the Board's alleged "inability to find a hearing officer for those particular dates."The Superior court is therefore obligated to hear appeals filed pursuant to 42035-15 " with the greatest possible expedition and shall take precedence over all other matters except matters of the same character." Section 28-7-32

Appellant has remained without gainful employment and denied her property interest/livelihood now for more than five years due to the conduct and statements of the Board/McIntyre which has resulted in this " contested case."

WHAT MAKES THIS A CONTESTED CASE

The lower court's decision (De) @ pg 27 reads, " The investigating Committee was enlisted by the Director of Health to investigate the Appellant's behavior after a complaint was filed ....." @ pg 31 the De reads, " Appellant argues that McIntyre who prosecuted the instant action commingled functions as prosecutor and witness. Appellant contends that throughout the proceedings McIntyre injected questions that suggested McIntyre's firsthand knowledge of events and his own characterization of what had occurred." It was not just the function of prosecutor and witness but being the investigator, aiding in the altering of a handwritten original complaint (the man in the red tie helped me @ T pg 16 10/5/00), convincing the witness to file a complaint (mother's complaint letter of 7/30/99), allowing the hearing panel to hear his own fabrications but deny Appellant her due process to have supporting evidence and witnesses (De@28 in claiming that Mills put Yale and Brown residencies on her application to RI Hospital and @ pg 116 T 12/7/00 on her CV but not allowing the panel to see the CV). McIntyre was counsel for the Director of Health and a member of the Investigating Committee as well as prosecuting counsel for the Medical Board who by R.I.G.L. must have expertise in medical malpractice law (question is whether McIntyre was qualified in this field of law). A motion to disqualify McIntyre as prosecutor in this case was not as the court/board labeled it, " harassing technique," but to afford appellant her due process to a fair and judicial hearing.

McIntyre wrote a witness list on December 10, 1999 and appellant received it December 20, 1999. She immediately contacted some of the doctors that were listed from her call group. They had not been contacted by McIntyre even though the latter wrote they all would testify to appellant's "aggressive and threatening behavior." McIntyre wrote Dr Pietro Russo was going to testify to appellant's threatening

him antisemitic. Dr Russo told appellant that he never told the Board or McIntyre this and that neither had contacted him prior to McIntyre fabricating this horrific allegation.

Counsel McIntyre had to review all supporting evidence and witnesses that the Appellant submitted to determine if he would " allow" Mills to present same. Out of the 28 pieces of evidence (De @ 30) Mills was allowed to submit only the original handwritten complaint of the mother which spoke of record release forms.

The lower court does not address the issue of release forms required by RIGL to be signed by parents and patients for the transfer of confidential health care information in its 36 page decision. McIntyre forced appellant with threat of suspension to release confidential information without signed releases in 1998 but also again in March 2000 even after appellant was " temporarily suspended" awaiting a hearing for one year.

Lower court @ 9 reads, "... he was called into his supervisor's office and was informed that .....in regard to suspicious injuries on Patients A and B." The court knows that the call was made on a girl then just 16. The DCYF CPS protocol report taken from the call reads, " reference person and alleged victim," was the 16 year old. The mother's shoulder fracture and the sibling sister who had then turned 19 were mentioned because abuse runs in families and the older girl had been a NEAR SIDS some time in infancy. The mother never gave these records to any pediatrician caring for her children in the state of Rhode Island. Yet the lower court, affidavit of McIntyre and Counsel Turilli for the Board all persist in alleging Mills only called on one girl who had attained the age of 19 and was " emancipated. De @ 10, " Dr Mills further admitted that the patient she was calling the Hot Line in regard to was 19 years of age at the time...."

Again @ pg 10, " ....Dr Mills conceded that she made this call ...regarding Witness Two who she was aware worked for DCYF." Appellant did not call suspecting that the father

was the perpetrator but was concerned about the mother. The lower court furthers that @ 10, " ... made this call ...only after she had learned that Witness One (mother) and Witness Two (father) had filed a complaint.." The father had not made a complaint until after appellant made the call of October 5, 1999. His complaint is dated October 15, 1999 and was signed at the Medical Board and notarized by a secretary for the board Jacqueline Landry (the very person that told Mills she was suspended as of January 8, 1998 due to her " bounced" check).

Lower court De @ 22 " ...Rhode Island Supreme court has not specifically addressed the extent of the Board's authority in determining what constitutes inappropriate and unprofessional conduct, other jurisdictions have...." Cited is the Arkansas case of a doctor who gave two prescriptions to one man doing so under two names and the treatment was not necessary. The court furthered when examining a statute the words must be given " their plain and ordinary meaning....." It was medically necessary to render services as 1) immunizing all children with c pox vaccine so they would not be barred from attending school 2) attending to a 5 week old infant in its car seat (by law must be in the back seat of cars) who the mother alleged was in respiratory distress (" not breathing right")3) signing a day care and camp form so 2 children wold not be excluded from attending and 4) necessary to medically evaluate an 11 month old infant whose weight was significantly less than the 5th %ile and head circumference was declining from 95th to less than 5th%.

Expert for the board testified that all the medical records he reviewed met the medical standard of care, that if the visit for the day care and camp forms to be signed were of a very cursory nature barely meeting the definition of a true physical exam (as they were) would be acceptable.

The lower court under arbitrary and capricious states the Supreme Court of Rhode Island has a standard of review which is " limited in its scope and affords great deference to

agency decisions as long as acting within authority making decisions that are rational, logical and supported by substantial evidence." They must then apply this to the meaning of statutes which they state must be read as " unambiguous and with the plain and ordinary meaning" of the words. With logic rationale and supported by evidence on the record, the Webster definitions of the following words are presented: 1) enrolled means registered (Mills was registered/enrolled in 2 yrs of the medical school curriculum while matriculated in the graduate school in Pathology at Case Western Reserve- supported by Deans letters of both CWRU school of medicine and Ross medical, CV, RI Hospital application, Brad Carlson's pending application checklist, pre application, and Mills' RI license application)

Acceptance is not admittance. Lower court @ 28 states, " her admission to the Yale and Brown residency programs..." Acceptance is defined as favoring as in " highly ranking," or " selecting you as." Admission is a confirmation that the act has or will occur. In the National Resident Match Program all candidates rank the programs according to their own choices. Not all candidates are " accepted, selected, or ranked highly." Mills received letters from two programs and a call from a third program informing her that she was " accepted as a Match candidate." Knowing which programs were going to rank her highest Mills then produced her list placing the Yale and Brown programs lower than her preferred choice of Ohio. A candidate only receives one, if any, position. Mills' CV does not list any Yale or Brown residency. Page 2 of the RI Hospital application does not state any Yale or Brown residency. There were no misrepresentations on the part of Mills.

The word " possibly" means that it may or may not. One cannot logically claim that one can be wrong about suspecting something may be possible. Expert Dr Eden testified Mills was " wrong" about the possibility of the infant having William's Syndrome even though he did not remember

what it was.

The lower court @ 24 states, " the expert testified that a competent physician would not have suspected Williams Syndrome..." The expert never testified as such. He testified that there was " nothing in the record to indicate incompetent" and that the referral to Dr Buckley was " not inappropriate."

Differential diagnosis is a procedure that meets all medical standards of care and is done every time a patient is seen. Failure to diagnose a patient is incompetent and negligent; failure to test to rule out possibilities is negligent and incompetent. The lower court @ 14 states, " ....all tests were negative...." The medical records of the infant clearly do not indicate this. The infant was anemic, had an unusually high and erratic alkaline phosphatase level, had a pulmonic ejection click, pulmonic murmur, a head circumference declining from 95th to the 25th % (later to th 5^{tho}%) and was significantly less than the 5^{tho}% in weight with a long history of vomiting. The mother (hearsay) testified the cardiologist told her she " did not need to even be there." The mother testified that the cardiologist did not schedule a follow-up visit and did not think the infant needed any additional tests. The medical records of the infant do not support either of these statements, in fact contradicts them. Therefore, the lower court cannot affirm the decision of the medical board.

Lower court @ 25 again cites, " while our Supreme Court has not directly addressed the degree of discretion a medical board ought to be afforded when making a decision regarding the adequacy of a physician's care..." The court again cites an Arkansas case wherein a physician was suspended due to having, " negligently led a patient to believe that she was pregnant for a period of four months." A differential diagnosis is given every time a patient is evaluated for an enlarged lymph node. It may be benign or malignant. Not until a biopsy is done does the patient know for sure what the etiology is. This cannot be compared to a physician misleading a patient into believing that they have an illness

when they do not. These differential diagnoses are provisional possibilities only. In the instant case the differential was malnutrition/malabsorption/rule out possibility of Williams. The mother wrote on an intake form at the cardiology visit of 5/28/98 (ten days after last seeing Mills) that her only concern was " not gaining weight." Had the mother been concerned about her daughter becoming a "dwarf" or having any other problem she would have told the cardiologist and written it on the intake form. No mention of stature by the use of any term was ever used by the Appellant. Lower court @ 14 states, " ...Dr Mills used these terms in reference to Patient F." The record below clearly shows this to not be factual. The mother testified herself that Mills did not use the word " midget." (Mother's altered complaint stated midget, handwritten complaint made no reference, her testimony stated dwarf and the brother-in-law used the term elf).

Appellant was not so concerned about the hearsay that was admitted as to the star 69 call by the 15 year old. What has concerned her is that her statements were objected to and the objections were sustained. The lower court @ 29 states, "hearsay is quite acceptable in administrative hearings." Mills therefore by the same standards is to be afforded the same due process in her testifying that 1) her secretary Tina described it as " the odor of foul chicken and it made me dizzy like I had 3 glasses of wine" 2) Tom Campbell from DEM stated the x ray tank fluid was hazardous and recommended no longer using the room so affected 3) Peter Sullivan of DEM and Lincoln Environmental confirmed the gasoline vapors in the building were hazardous to human health and 4)all those physicians named Dr Thomas LaCava, Dr George Hanna, Dr Dennis Aumentado, Dr Alfred Johnson, all concurred that Mills was medically cleared as competent to practice medicine; and mentally cleared as by Drs Stewart, Harrop and Goodwin.(Since that time cleared as competent with no psychopathology by Drs Seely, Pomm, Jaeckle, and Rogoff). This just names a few of the " hearsay" testimony.

As to the more than 250 pieces of supporting evidence and more than 35 witnesses Mills had, she was not allowed any except as mentioned the one handwritten original complaint of the mother. This was by all state statute to be the only complaint forwarded to the physician and by all state statutes was to be placed on the record. McIntyre did not have to " allow it." Lower court @ 30 states, " throughout the hearings appellant had numerous opportunities to call witnesses on her behalf and submit evidence to substantiate her claims, at no time during the proceedings did Appellant attempt to do so." This is not factual once again. Appellant brought two large suitcases of supporting evidence that the Chairperson Dr Stanley Stutz had to aid appellant in bringing into the hearing room. Repeatedly appellant handed supporting evidence across the table to Dr Stutz and was rebuffed time and time again. It is not rational nor logical nor of a reasonable belief that appellant would not even " attempt" to show the hearing panel the public records, monitor reports of gasoline and all other supporting evidence. It is in violation of the duties of the Hearing officer to not place this information on the record for it was necessary for due process and a fair and just hearing. Without this evidence it is as the only expert testified, " assuming all the information I was given to be true." The expert testified he did not know whether there were gasoline/hydrocarbons vapors in appellant's office building. The expert's testimony was not based on a review of the whole record or facts but just what the complainants alleged. This is not a " meaningful manner" in which to hold a hearing on such a significant issue as to depriving a physician of their livelihood.

It is with no logic, no rationale, and without any reasonable belief that McIntyre took the words of his own witnesses and altered them as " she was courteous" in the call becomes she " hysterically screamed," and there was a " non-investigation," became " a thorough investigation." This is arbitrary and capricious. The administrative interpreters have

not acted within their authority to make rational, logical decisions supported by substantial evidence. The Administrative hearing process and the decision as rendered by the State of Rhode Island lower court are in violation of all statutes, R.I. Gen Laws, the APA and Constitutional amendments affording due process to the Appellant.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. SUPERIOR COURT

GERALDINE MILLS, M.D.

VS PC NO: 01-4153

PATRICIA NOLAN, M.D.,M.P.H.
DIRECTOR DEPARTMENT OF
HEALTH

DECISION

PROCACCINI, J. Before this Court is an administrative appeal from a July 10, 2001, decision by the Rhode Island Department of Health, suspending Geraldine Mills's (referred to in this decision as " Appellant" or " Dr. Mills") license to practice medicine for an indefinite period of time. The Appellant seeks reversal of the Board of Medical Licensure and Discipline's decision suspending her license. Jurisidictin is pursuant to R.I. Gen. Laws 1956 42-35-15.

I.. Case Travel and Facts

On October 19, 1999 the Director of Health issued an Order summarily suspending Dr Mills's license to practice medicine in Rhode Island. The Board of Medical Licensure and

Discipline set a hearing date for October 29, 1999, which upon Dr Mills's counsel's request, was continued until November 5, 1999. Subsequent counsel for Dr Mills requested a further continuance until December 1999. On December 1, 1999, Dr Mills received the Board's Amended Specification of Charges charging Dr Mills with seven counts of unprofessional conduct, in violation of R.I. Gen. Laws 5-37-5.1.

After receiving the Amended Specification of Charges, Dr Mills's counsel proceeded to file several procedural motions which were heard at the original hearing on December 8, 1999.On December 21, 1999, the Board issued a written Decision and Order denying all of Dr Mills's motions. On this same dater the Board granted Mills's request for a continuance to enable her counsel to engage in discovery.

Hearings on this matter reconvened on August 23, 2000 and continued through December 7, 2000. The dates of the hearings were as follows: August 23, 2000; September 21,2000 October 5, 2000; October 19,2000; and December 7, 2000. During the hearings, the Board received 28 exhibits, and heard testimony from six witnesses: the mother and father of female Patients A,B,C,D; the mother and father of female Patients E and F; Dr Eden, an expert in the field of Pediatrics; and Dr Mills. Dr Mills did not present any witnesses to testify on her behalf.

On July 10, 2001, the hearing panel rendered its decision to suspend Dr Mills's license indefinitely. The Board's decision provided that Dr Mills can apply for reinstatement after she has undergone a physical and psychiatric examination by medical professionals pre-approved by the Board, and the reports from this examination indicate she is fit to practice. On July 11, 2001, Director of Health approved the Board's decision. Dr Mills filed an administrative appeal of that decision on August 9, 2001, pursuant to R.I. Gen Laws 5-37-7. The appeal of that decision is now before this Court.

The facts of this case are organized in terms of the counts Appellant was charged with during the proceedings. On

August 23, 2000, the Board heard testimony from the Appellant. On September 21, 2000 the Board heard testimony from the parents of Patients A.B.C.D. and the Appellant. On October 5, 2000 the Board heard testimony from the parents of Patients E and F. On October 19, 2000 the Board heard testimony from the Appellant and Dr Eden. On December 7, 2000 the last day of the hearings the Board heard extensive testimony from the Appellant on direct examination. The pertinent testimony of each of the aforementioned witnesses is recounted in relation to the respective counts contained in the Amended Specification of charges.

Count One

Count One charged Dr Mills with unprofessional conduct in violation of R.I. Gen Laws 5-37-5.1 (8) and 5-37-5.1(19) for submitting an application to the Rhode Island Hospital Credentials Committee in 1993 that contained false erroneous and misleading information regarding her credentials. The Board reviewed five exhibits relating to this charge including the following: the report of the Rhode Island Hospital Credentials Committee regarding information provided by Dr Mills (State's Exhibit 12); Dr Mills' application for staff privileges to said hospital (State's Exhibit 10); letters of admission to both the Yale University (Yale) and Brown University (Brown) residency programs, provided by Dr Mills in support of her application (State's Exhibits 8 and 9); and the record of Dr Mills's hearing before the Rhode Island Hospital Credentials Committee (Exhibit 13). Additionally the Board heard testimony from Dr Mills relating to this charge.

Upon review of the aforementioned exhibits the Board concluded that there were several discrepancies between the information Dr Mills provided on her application for staff privileges to Rhode Island Hospital and her actual credentials. These inaccuracies were particularly apparent during Mills' hearing before the Credentials Committee. During the hearing, it was revealed that many of the credentials listed by Dr Mills on her application were broad overstatements. Dr Mills'

application indicated that she was enrolled in a " PhD/MD program at Case Western Reserve University, that she had been admitted to both the Yale and Brown medical residency programs and that she voluntarily left her internships at St Thomas Hospital and Winthrop University Hospital. Upon questioning by the Committee, Dr Mills admitted that she had only attended medical school classes at Case Western Reserve University as part of her graduate pathology program and was never actually enrolled in their medical school. Upon further investigation by the Committee, it was also revealed that DR Mills was never actually admitted to the Yale and Brown residency programs, and that she was not offered a second year to continue her internships at St Thomas Hospital and Winthrop University Hospital. The Board concluded that Mills's efforts during the hearings to clarify these discrepancies were " at best convoluted and inconsistent." (Administrative Board Decision at 4,) Furthermore, the Board found Dr Mills's steadfast assertion of having voluntarily withdrawn her application from the Rhode Island Hospital Credentials Committee to be disturbing when it was clear that the hospital denied her application for staff privileges(Administrative Board Decision at 4).

Count Two

Count Two charged Dr Mills with unprofessional conduct, in violation of R.I. Gen Laws 5-37-5.1,5-37-5.1(18)and 5-37-5.1(19) for her incompetent and negligent treatment of female patients A,B,C,D, her inappropriate communications with the parents of said patients, and her willful misconduct in the practice of medicine relating to this family. In relation to this charge, the Board heard testimony from the parents of Patients A,B,C,D, Dr Eden an expert in the field of Pediatrics, retained by the Board and the Appellant herself. At the time proceedings began Patient A was 19 years of age, Patient B was 17 years of age, Patient C was 15 years of age and Patient D was 5 years of age.

The mother of Patients A, B, C, and D (herein referred

to as Witness One) testified that she began taking her daughters to see Dr Mills when her youngest daughter was born. (Tr of September 21, 2000 at 5) Witness One testified that during the time she was using Dr Mills as the family Pediatrician Dr Mills moved her office to four different locations. (Tr of September 21, 2000 at 5-7). Witness One further testified that at the third office location on Warwick Aveneu Dr Mills treated Patients B and D outdoors. When witness one arrived with Patient B and D for their scheduled appointments to get physicals, Dr Mills was standing in the driveway and informed them that the office was contaminated. Witness One testified that Dr Mills conducted the initial examination of Patients B and D on the front lawn towards the street and then requested that Witness One take Patient D inside for a urine sample. When Witness One returned with Patient D, the remainder of the physical was conducted on the front lawn. Witness one further stated that during this same visit, Dr Mills asked Patient B whether she was sexually active leaving Patient B mortified. According to Witness One, Dr Mills proceeded to take blood samples from Patient B in her medical assistant's van, before deciding that it was too hot in the van, at which time Dr Mills decided to take Patient D's blood outside on the grass. Witness One further testified that during the same visit, Dr Mills pointed to an airplane flying over them and made a comment to the effect that the place was dropping jet fuel.

Relating to this same charge, the father of Patients A,B,C,D, herein referred to as Witness Two, testified about his concerns with Dr Mills. Witness Two stated that he personally brought his daughters to see Dr Mills on approximately four occasions and was concerned by the frequency with which Dr Mills was switching office locations. According to Witness Two his concern regarding Dr Mills's treatment of his daughters was heightened when he learned that Dr Mills treate Patients B and D outdoors at the Warwick office. (Tr September 21, 2000 at 61-63)

Also providing testimony relating to this charge was Dr

Eden, who stated that in the standard of practice of medicine it would not be acceptable to practice medicine outdoors, noting that privacy and security are factors to be taken into consideration. (Tr October 19,2000 at 35). Dr Eden expalined that assuming there was a problem with a pediatrician's office building preventing its use, standard practice would require that the physician secure a private environment to protect the sanctity of the doctor/patient relationship. (Tr of October 19, 2000 at 35). According to Dr Eden, barring a medical emergency, it would be more appropriate to cancel an examination than to conduct an examination outdoors. Dr Eden clarified that in standard practice, a camp or school physical does not constitute a medical emergency. Additionally, Dr Eden was firm in his testimony that conducting an examination in a car outside the physicians' office stretched the bounds of propriety, barring an absolute emergency. Dr Eden explained that such significant deviations from standard practice in the performance of medical examinations demonstrate inappropriate judgment, a sufficient reason for a pediatrician's disqualification. (Tr of October 19, 2000 at 65)

In response to these allegations, Dr Mills testified about her treatment of Patients A. B. C, and D. Dr Mills' testimony during the proceedings substantiates that she conducted an examination of Patients B and D outdoors because she believed her office to be contaminated. Dr Mills did not dispute any of the facts relayed by Witness One regarding the outdoor examination of Patients B and D. Furthermore, Dr Mills admitted that she sent Patient D inside the office for a urine sample when she herself would not enter the office because she believed the office contained deadly toxins. In totality, Dr Mills' testimony relating to this charge revealed that all of the information relayed by the parents of Patients A,B,C,D, with respect to these patient's medical care were accurate.

Count Three

Count Three charged Dr Mills with unprofessional conduct in violation of RI Gen Laws 5-37-5.1 (18) and 5-37-

5.1(19) for failing to maintain complete and accurate records for Patients A,B,C,D, and for reporting false, misleading, and irrelevant information on said records. Witness one and witness two as well as the Appellant provided testimony in relation to this charge.

During the hearings Witness One testified that all of her daughters' previous medical records from other doctors and hospitals were provided to Dr Mills when they took her on as the family pediatrician (Tr September 21, 2000 at 25). She testified that the records were complete when they were provided to Dr Mills and a yellow shot card was now missing from the records. (Tr of September 21, 2000 at 26). Witness One also explained that Patient A's apnea records which were transported to Dr Mills were now missing. (Tr of September 21, 2000 at 27). Also testifying in relation to this charge, Witness Two stated that Patient A's chart included an inaccurate notation that reads that he was too busy to take Patient A for an MRI after she was injured ono a roller coaster. According to Witness Two, he never made any such comment to the Appellant. (Tr of September 21, 2000 at 72).

The Board also heard testimony from the Appellant in relation to this charge. During her testimony, Dr Mills admitted to placing information in the aforementioned patients' records that did not directly concern their medical treatment. Dr Mills testified that she included in these patients' summary sheets, Witness One's statements that she did not smell toxins in the Appellant's office building. At the same time the Appellant conceded that these summary sheets are intended to be devoted to the most important information regarding the patient's medical history.

Count Four

Count Four charged Dr Mills with unprofessional conduct in violation of R.I. Gen Laws 5-37-5.1,5-37-5.1(8), 5-37-5.1(18) and 5-37-5.1(19), for anonymously making an unfounded telephone complaint to the Department of Children Youth and Their Families (DCYF) suggesting child abuse by

the parents of Patients A,B,C,D. The Board further maintained that this complaint was made as a retaliatory measure, because the parents had filed a complaint against Dr Mills with the Department of Health. The Board heard testimony from the mother and father of Patients A,B,C,D,, Dr Eden and the Appellant relating to this charge. The mother of Pateints A,B,C,D testified that she contacted the Department of Health concerning the Appellant after receiving a phone call in which the Appellant seemed suicidal. (Tr September 21, 2000 at 12) During this conversation the Appellant told Witness One that everyone , but namely the Department of Health and Blue Cross were all out to get her. Witness One stated that after she sent a letter to the Department of Health regarding the Appellant's behavior, the Appellant began calling her family at their home demanding to speak with either her or her husband. On one occasion the Appellant called back at midnight to speak with Witness One's husband and during that conversation asked why they were doing this to her. (Tr September 21,2000 at 15) According to Witness One subsequent to this conversation the family received telephone calls and hangups one of which Patient B directly traced back to Appellant by dialing star 69. (Tr of September 21, 2000 at 15-17). Witness Two's testimony outlines the full extent of retaliatory measures taken by Dr Mills. Witness Two who is employed as a case worker for DCYF, testified that Dr Mills filed a complaint against him with DCYF claiming that she suspected abuse. According to Witness Two, he was called into his supervisor's office and was informed that an anonymous call had been made to the Child Abuse Hot Line in regard to suspicious injuries on Patients A and B. He further testified that the only person he could fathom making such a complaint was Dr Mills. He explained to his supervisor that he had filed a complaint against Dr Mills and suspected that it was she who made the call. On account of this information, Witness Two explained that DCYF conducted a non-investigation, downgraded to an early warning.

(Tr September 21, 2000 at 64). Witness Two testified, however, that though a non-investigation was considered more appropriate given the unusual circumstances, both the supervisor and the chief investigator were involved and asked Witness Two questions regarding potential abuse.(Tr of September 21, 2000 at 66)In relation to this charge, Dr Eden testified that there was nothing in the medical history o Patients A and B that would have led him to suspect child abuse. According to Dr Eden a physician who is referred a medical chart from another physician has a duty to review that chart and consult the previous physician if he has any concerns about the care and treatment of that patient.(TrOctober 19, 2000 at 29). In cases where a Pediatrician might suspect child abuse Dr Eden explained that the pediatrician would have a duty to consult the patients' record thoroughly and contact past treating physicians and past treating hospitals before contacting the appropriate agency (Tr October 19, 2000 at 30-31). Dr Eden further clarified that the information provided in the records that Witness One brought to Dr Mills regarding Patient A's past medical history would have given a pediatrician sufficient notice that the child had a near Sudden Infant Death Syndrome(SIDS) event in her life. (Tr of October 19, 2000 at 34) Furthermore, Dr Eden explained that if a pediatrician does suspect child abuse, neglect, or sexual abuse the pediatrician is required to report that suspicion to DCYF or the appropriate agency and then follow that up with a written physician's record of examination. (Tr October 19, 2000 at 40). Dr Eden testified that it is not in accordance with the appropriate standard of care for a physician to call an anonymous hotline regarding suspicions of child abuse.(Tr October 19, 2000 at 41) During Dr Mills' testimony on this issue Dr Mills conceded that she call the Child Abuse Hot Line regarding Witness Two, who she was aware worked for DCYF. (Tr August 23, 2000 at 76). Dr Mills stated that she made this phone call ono October 5, 1999 only after she had learned that

Witness One and Witness Two had filed a complaint against her with the Department of Health. (Tr August 23, 2000 at 75) Dr Mills further admitted that the patient she was calling the Hot Line in regard to was 199 years of age at the time and had already started college. (Tr August 23, 2000 at 76). Dr Mills explained that the possibility of abuse came to her attention when she was carefully reviewing the records of Patients A,B,C,D, so she could respond to the claim Witness One and Two had filed against her. (Tr August 23, 2000 at 75) According to Dr Mills she was particularly disturbed that Witness One had never mentioned that Patient A was a near SIDS baby; yet had mentioned that Patient A had apnea. (Tr August 23, 2000 at 75) Dr Mills explained that this was worrisome because SIDS is more commonly known than apnea. (Tr August 23, 2000 at 75) Furthermore, Dr Mills claimed that when she thoroughly looked through the medical records of Patient A provided by Witness One, she notice numerous injuries from haphazard incidents which led her to believe that there was abuse occurring.(Tr October 19 2000 at 20) Dr Mills later testified that she made the complaint to DCYF because she was concerned about Patients A and B C and D after seeing a Dateline show in which a girl was murdered by her father (Tr of December 7, 2000 at 57) According to DR Mills she feared that is she identified herself when making the report she would be suspended.(Tr of December 7, 2000 at 66)

Count Five

Count Five charged Dr Mills with unprofessional conduct in violation of R.I.Gen Laws 5-37-5.1, 5-37-5.1(18) and 5-37-5.1(19) by reason of professional incompetency in committing acts of misconduct due to an impairment that has directly affected her ability to practice professionally. As this charge is more general in nature, all of the testimony throughout the proceedings is relevant. During the hearings both Witness One and Witness Two expressed concerns for the Appellant and explained to the Board that their reason for

filing a complaint with the Department of Health was that they were worried that the Appellant might harm herself. Both sets of parents who testified during the proceedings explained that they had filed complaints against the Appellant with the Department of Health after making the decision to switch to new pediatricians. Furthermore, during the proceedings Dr Eden testified that in his expert opinion he did not believe that the Appellant was fit to practice medicine at the current time. In addition to the testimony of States' witnesses, a large basis for the Board's determination relating to this charge stems from the Appellant's own testimony during the proceedings. During her testimony, Dr Mills admitted that she moved four times during her time in private practice which lasted from 1994 until 1999. She explained that the reason for each of these moves was contamination in the buildings where her various offices were located. (Tr December 7, 2000 at 9-19) According to Dr Mills her first office located on the Jefferson Boulevard, was contaminated by the carpeting and glue used in the office. Dr Mills went on to explain that although her second office building located at Reservoir Avenue, was not initially contaminated, it became contaminated after she moved her things over from the first building to the second building. Moreover, she testified that along with her furniture, medical equipment, paper and books, her patients' charts became contaminated. Though Dr Mills claimed that such contamination could be verified through tests conducted by 3-M Corporation, Dr Mills never provided the results of such tests during the proceedings, even after being asked to do so. Dr Mills further testified that she was never informed by DEM or the real estate agent that there had been a gasoline spill under the third office building. Finally, Dr Milis attributed the contamination in the fourth building to toxic levels of formaldehyde. (Tr of December 7, 2000 at 29-30).

In explaining how she confronted these situations, DR Mills testified that she informed most of her patients about the contaminants in the various buildings, and as soon as she

became aware that there were toxins in a building, she would begin doing house calls. (Tr of December 7, 2000 at 38) Dr Mills further explained that on one occasion, she examined a patient in the parking lot of St Joseph's Hospital after St Joseph's Hospital refused to allow her to examine the patient in the Emergency Room of the hospital. During the proceedings, Dr Mills felt it was important to clarify that this examination took place in the back of the patient's car. (Tr of December 7, 2000 at 30-40). Dr Mills further admitted that due to the toxins in her offices, she gave her patients chicken pox vaccine outdoors in the back of her office building, where according to Dr Mills, it was private. (Tr December 7, 2000 at 54-55) Dr Mills did not dispute the fact that she allowed her medical assistant and young patients to go in and out of her office when she herself would not enter the office building because she believed it contained deadly toxins. (Tr of December 7, 2000 at 44-45). Dr Mills explained that she would wait outside while her patients went inside the office attended by Dr Mills' medical assistant, so the patients could be weighed, measured and have their temperatures and vital signs taken. (Tr of December 7, 2000 at 45-46).

With respect to submitting to a psychiatric examination, as required by the Investigating Committee, the Appellant testified that she did not care for the psychiatrist chosen by the State and decided to choose her own psychiatrist to conduct an evaluation. The Appellant proceeded to explain that the psychiatrist she had chosen did not complete the evaluation because they could not get along.

Count Six

Count six charged Dr Mills with unprofessional conduct in violation of R.I. Gen Laws 5-37-5.1, 5-37-5.1(19) 5-375.1(24) and 5-37-22 and the Rules and Regulations of the Board of Licensure and Discipline regarding medical records 11.2 for her incompetent and negligent care of Patients E and F. In relation to this charge, the Board heard testimony from the parents of E and F, Dr Eden and Dr Mills.

The mother of Patients E and F (herein referred to as Witness Three) testified that she first became concerned about Dr Mills' conduct when she noticed Dr Mills' aggressive behavior toward Patient E. Witness Three explained that Dr Mills became irritated when Patient E exhibited agitation about receiving injections and that Dr Mills would request that Witness Three hold her daughter down. Additionally, Witness Three testified that Dr Mills used an aggressive tone with Patient E. Witness Three also testified as to how uncomfortable it was for her to bring Patient E for shots due to the tense environment it created and explained that she has not incurred similar problems since she switched pediatricians. (Tr of October 5, 2000 at 6-7).

Regarding the care of Patient F, Witness Three testified that Dr Mills informed her that Patient F was not growing at the standard rate and made statements to the effect that Patient F could potentially turn out to be a dwarf. Witness Three testified that Dr Mills showed her pictures of dwarfs and commented that dwarfs have a life span of approximately 20 years. According to Witness Three, Mills went through a thorough explanation of dwarfism, showed Witness Three a medical book stating the symptoms and signs of the disease, and went on to tell Witness Three that Patient F exhibited dwarf like features, and may be suffering from a condition known as Williams Syndrome. Dr Mills also used the descriptive terms, " elf" and " midget" in referring to this patient. Although there was some confusion during the proceedings as to which of these words was used at the time, the record reveals that Dr Mills used these terms in reference to Patient F. Based on Dr Mills' findings, Witness Three testified that Dr Mills ordered related tests, consisting of a heart exam and x-rays. Witness Three further testified that when she brought Patient F for the heart exam, that doctor told Witness Three that there was no need for such extensive tests. Witness Three further explained that despite these findings Dr

Mills wanted to conduct additional tests because of Patient F's small size. The results of all tests done on Patient F proved negative. (Tr October 5, 2000 at 30)In addition to finding the above stated treatment of Patients E and F to be inferior, Witness Three's testimony also revealed that she was taken aback by DR Mills' lack of attentiveness in ensuring that she was able to care for Patients E and F on a regular basis. According to Witness Three between 50 to 60 percent of the time Patients E and F needed to see Dr Mills on an emergency basis they were transferred to another doctor. (Tr of October 5, 2000 at 14). Witness Three further stated that she was given a beeper number to use for emergencies which she was afraid to use because Dr Mills appeared very irritated when she was called on her beeper (Tr of October 2000 at 27).As a result of the difficulties which they were experiencing in using Dr Mills as the family pediatrician, Witness Three testified that she and her husband decided that it would be best if they chose a new pediatrician. Upon making this decision, Witness Three stated that they informed Dr Mills that they would need her to transfer the medical records of Patients E and F. Witness Three testified that Dr Mills refused to send said records to the new pediatrician until Witness Three and her husband paid certain co-pays she claimed were outstanding. (Tr of October 5, 2000 at 12) Witness Three further explained that neither she nor her husband understood how Dr Mills arrived at the total amount allegedly owed, and there was no clarification on this issue.The father of Patients E and F (herein referred to as Witness Four) corroborated his wife's testimony, explaining that after he and his wife decided to switch to a new pediatrician, he went to the Appellant's office to sign a release for the transfer of medical records, (Tr of October 5, 2000 at 44) Witness Four testified that Dr Mills informed him that she would like Witness Four and his wife to pay her bill before she transferred the medical records.(Tr of October 5, 2000 at 52) Witness Four responded that they would not pay the bill until Dr Mills accounted for the

amounts listed, at which time Dr Mills agreed to transfer the records and give an accounting of the amounts allegedly owed. Witness Four explained, however, that the records promised were not transferred until after he contacted the Department of Health a couple of weeks later (Tr of October 5, 2000 at 46).In addition to the testimony of Witnesses Three and Four regarding Dr Mills' care of Patients E and F, the Board heard extensive testimony from Dr Eden on this subject. In regards to Dr Mills' treatment of Patient E, Dr Eden testified that it is not customary practice for a pediatrician to act aggressively when pediatric patients express agitation about receiving injections. With respect to Dr Mills' care for Patient F, Dr Eden testified that there was nothing in Patients F's chart that would lead him to conclude that Patient F would be a midget, elf or a dwarf. Dr Eden further explained that though Patient F was short, she was proportional for her weight and he would characterize her growth as normal. (Tr of October 19,, 2000 at 36). Though Dr Eden conceded that Patient F was only in the fifth percentile in terms of weight and that a doctor would want to monitor the child's growth given such facts, he stated that it would not be cause for alarm. (Tr of October 19, 2000 at 67). Furthermore, Dr Eden explained that although the cardiologist did find a slight heart murmur in Patient F, absent a failure to thrive, Dr Mills had no basis for her suspicion that Patient F suffered from a disease known as William's Syndrome. (Tr of October 19, 2000 at 74). In regard to the transferring of medical records, Dr Eden testified that in his opinion it would violate the standard of care for a doctor to withhold a medical record for unpaid balance. (Tr aof October 19, 2000 at 28).

Count Seven Count Seven charged Dr Mills with unprofessional conduct in the acts referred to in the Summary Suspension of October 19, 1999 and for the collective and cumulative impact of the aforementioned acts of misconduct. This charge relates to all the testimony throughout these proceedings, paraphrased in the discussion of the preceding

counts. Based on the cumulative weight of the evidence presented throughout the proceedings, the Board concluded that the Appellant is presently unfit to practice medicine. II Standard of Review The Court's review of a decision by the Department of Health is controlled by R.I. Gen Laws 1956 42-35-15 (g) which provides for review of a contested agency decision: (G) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions a re:

(1) In violation of constitutional or statutory provisions; (2) In excess of the statutory authority of the agency (3) Made upon unlawful procedure; (4) Affected by other error or law;(5)Clearly erroneous in view of the reliable probative and substantial evidence on the whole record; or (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."This section precludes a reviewing court from substituting its judgment for that of the agency in regard to the credibility of the witnesses or the weight of the evidence concerning questions of fact. Costa v. Registry of Motor Vehicles 543, A.2d 1307,1309 (R.I. 1988); Carmody v. R.I. Conflict of Interest Commission, 509, A.2d 453 (R.I. 1986). This is true even in cases where the court, after reviewing the certified record and evidence, might be inclined to view the evidence differently from that of the agency. Berberian v. Dept of Employment Security, 414, A.2d 480 (R.I. 1980). This Court will " reverse factual conclusions of administrative agencies only when they are totally devoid of competent evidentiary support in the record." Milardo v. Coastal Resources Management Council, 434 A.2d 266, 272 (R.I. 1981). Questions of law, however, are not binding upon a reviewing court and may be freely reviewed to determine what the law is and its applicability to the facts. Carmody v

of competent evidentiary support in the record." Milardo v. Coastal Resources Management Council, 434 A.2d 266, 272 (R.I. 1981). Questions of law, however, are not binding upon a reviewing court and may be freely reviewed to determine what the law is and its applicability to the facts. Carmody v R.I. Conflicts of Interests Commission 509, A.2d at 458. The Superior Court's role is to examine whether any competent evidence exists in the record to support the agency's findings. Rocha v. Public Util. Comm'n 694, A.2d 722,727 (R.I. 1997)The Superior Court is required to uphold the agency's findings and conclusions if they are supported by competent evidence. Rhode Island Public Telecommunications Authority et al v. Rhode Island Labor Relations Board et al 650 A.2d 479,485 (R.I. 1994).Substantial Evidence Appellant argues that this Court should reverse the Board's decision because the Board's findings are not supported by the substantial weight of the evidence. Specifically the Appellant contends that the evidence presented during the hearings do not support the Board's conclusions regarding (1) the anonymous complaint Appellant made to DCYF (2) Appellant's concerns regarding Witness One's failure to mention that Patient A suffered from a NEAR SIDS episode (3) Appellant's treatment of patients outdoors (4) Appellant's differential diagnosis that Patient F might suffer from William's Syndrome (5) Appellant's willingness to transfer the medical records of Patients E and F (6) Appellant's willingness to undergo an evaluation (7) Appellants Rhode Island Hospital Application and (8) the issue of whether Appellant suffered from a mental impairment. The Board argues that under the fair preponderance standard, the Board had substantial evidence to find unprofessional conduct on the part of the Appellant for each of the seven counts. This Court addresses each of the Appellant's arguments below: DCYF complaint Appellant argues that the testimony presented during the hearings demonstrates that the Appellant had legitimate concerns in filing complaint with DCYF, against the parents of Patients

testimony for the Board to conclude that the Appellant's complaint to DCYF constituted unprofessional conduct. Though the Appellant contests the Board's determinations with regard to the credibility of the State's witnesses, it is not for the Court to substitute its judgment for that of the agency regarding the credibility of witnesses or the weight of the evidence with respect to question of fact. Tierney et al v The Department of Human Services 793 A.2d 210 (R.I. 2002) As with other witnesses, where evaluation of an expert's testimony implicated determination of credibility, the Court should defer to the agency's determinations. See Environmental Scientific Corp v Durfee 621 A.2d 200, 206-07 (R.I. 1993). The Board heard testimony from Witness One and Witness Two both of whom the Board found credible that the Appellant began calling their home and harassing them after they filed a complaint against the Appellant with the Department of Health. Each of these witnesses testified that Appellant had never expressed any concern that abuse might be occurring in their home and that there was no foundation for such concerns. The Appellant herself admitted that she placed an anonymous call with the Child Abuse Hot Line regarding Witness Two. The Board also found convincing the testimony of Dr Eden, expert in the filed of pediatrics, who stated that based on the record of Patients A, B. C, and D there was no reason for the Appellant to suspect that abuse was occurring.Furthermore, Dr Eden testified that if a pediatrician did suspect child abuse, it would not be in accordance with the standard practice to place and anonymous call. He explained that standard practice requires a physician to state their name and follow the phone call up with a written report. Moreover, the Appellant's handling of the complaint was in direct contravention of the law. The statute that cover reports by physicians who suspect abuse or neglect is R.I. Gen Law 40-11-6; The statute reads, (a) When any physician or duly certified registered nurse practitioner has cause to suspect that a child brought to him or her for examination, care of

treatment is an abused or neglected child as defined in this chapter or when he or she determines that child under the age of twelve (12) year is suffering from any sexually transmitted disease he or she shall report the incident or cause a report thereof to be made to the department as provided in subsection b (b) An immediate oral report shall be made by telephone or otherwise, to both the department and law enforcement agency and shall be followed by a report in writing to the department and law enforcement agency explaining the extent and nature of the abuse or neglect the child is alleged to have suffered. C) The department upon receipt of such a report by a person other than physician or duly certified registered nurse practitioner alleging that a child has been physically abuse, shall investigate the report, and it the investigation reveals evidence of physical or sexual abuse, the department shall have the child examined by a licensed physician or duly certified registered nurse practitioner. Any child protective investigator shall with or without the consent of the parent or other person responsible for the child's welfare have the right to remove the child from the place where the child may be to secure the examination required by this subsection. Upon completion of the examination, it shall be mandatory fore the physician or duly certified registered nurse practitioner to make a written report of his or her findings to the department. In addressing questions of statutory interpretations, the Supreme Court of Rhode Island had held that the Court " must literally interpret a clear and unambiguous statute and attribute the plain and ordinary meaning to words." Arnold in his capacity as Director, Rhode Island Department of Labor and Training v Rhode Island Department of Labor and Training Board of Review and Gail Adler et al.,822 A.2d 164,168 (R.I. 2003) (citing Solas v. Emergency Hiring Council of Rhode Island 774 A.2d 820,824 (R.I. 2001))). The above stature unambiguously distinguishes between the duty of physicians as compared to the duty of ordinary citizens in filing complaints regarding abuse. Thus, the Court finds that there

was substantial evidence in the record to support the Board's finding that the complaint made by Appellant constituted unprofessional conduct. Treatment Outdoors Appellant argues that the Board erred in finding that Appellant's decision to treat her patients outdoors constituted unprofessional conduct. Appellant maintains that such outdoor treatments were necessary because of problems in the various office buildings where she decided to locate her offices. Furthermore, Appellant assets that based on Dr Eden's testimony during the hearings, outdoor examinations may not be reason to disqualify someone from practicing medicine and outdoor exams are permissible in cases of emergency. In view of all the testimony presented during the hearings, this Court finds substantial evidence in support of the Board's finding that Appellant's outdoor treatment of patients constituted unprofessional conduct. "Judicial scrutiny on appeal ' is limited to a search of the record to determine if there is any competent evidence upon which the agency decision rests. If there is any such evidence, the decision will stand." Edmund A. Restivo Jr in His Capacity as General Partner of Sunnybrook Associates v Gerald R. Lynch et al., 707 A.2d 663,665 (R.I. 1998) (quoting E. Grossman & Sons, Inc v Rocha, 118 R.I. 276,285-86,373 A.2 496,501(R.I. 1977)). This Court finds substantial evidence on the record to support the Board's finding that Appellant's treatment of patients outdoors constituted unprofessional conduct, including the testimony of an expert witness who explicitly stated that the Appellant's use of outdoor treatment was not within the parameters of professional conduct. Under 5-37-5.1 (19) unprofessional conduct includes: " Incompetent negligent or willful misconduct in the practice of medicine which includes the rendering of medically unnecessary services and any departure from, or the failure to conform to, the minimal standards of acceptable and prevailing medical practice in his or her area of expertise as is determined by the board. The board need not establish actual injury to the patient in order to

adjudge a physician or limited registrant guilty of unacceptable medical practice in this subdivision." It is well established that this Court effectuates the Legislature's intent " by examining a statute in its entirety and giving the words their plain and ordinary meaning." Parkway Towers Associates v Richard H Godfrery Jr. In His Capacity as Executive Director of the Rhode Island Housing and Mortgage Finance Corporation 688 A.2d 1289 1294 (R.I. 1997)(quoting In re Falstaff Brewing Corp 637 A.2d 1047,1049 (R.I. 1994)). This Court's primary objective in applying a statute is to ensure that its enforcement is consistent with the statute's underlying purpose. Kirby v Planning Board of Review of the Town of Middletwon 634,A.2d 285,290 (R.I. 1993) (citing Zannelli v. Di Sandri 121 A.2d 652,655 (R.I. 1956)).

While the Rhode Island Supreme Court has not specifically addressed the extent of the Board's authority in determining what constitutes inappropriate conduct, other jurisdictions have found a Board of Medicine and licensees possess sufficient understanding in the field of medicine to make such determinations .The Court of Appeals of Michigan has held that statutory provision, which prohibits departure from minimal standard of practice is " sufficiently certain and definite" based on " well recognized meanings" to afford a licensee fair notice as to what type of conduct is unacceptable in the field of medicine. See Joseph W. Rucker, M.D. v Michigan Board of Medicine 360, N.W. 2d 154(Mich.App.1984) " It is therefore, proper for the Board of Medicine, having education and experience to determine whether petitioner's actions constituted a violation of minimal standards." Id, (citing Sanchick v State Board of Optometry 70 N.W. 2d 757 (1955) Warchuis v State Bd. Of Registration in Medicine 281 NW 410 (1938)). Adopting this same reasoning the Supreme Court of Arkansas has held that certain behavior is so obviously unprofessional that it not needs to be explicitly spelled out in a statute in order for a Board of Medicine to deem that it warrants a severe sanction. Thus, in Arkansas

State Medical Board v John O. Elliot, M.D. 563 S.W. 2d 427 (Ark 1978), the Supreme Court of Arkansas held that suspension of the appellant's license was appropriate where the appellant gave two prescriptions to the same man under two different names who admittedly had nothing wrong with him. That there was no law expressly proscribing such conduct could not excuse such sub par behavior on the part of a practicing physician. See id.

In the present case, there was substantial evidence in the record to confirm the Board's finding that Appellant's outdoor treatment of her patients was not in accordance with the minimal standards of acceptable and prevailing medical practice. Appellant herself admitted that on one occasion, she treated a child in a parking lot inside the patient's care, and other times, she would treat children outside in the backyard. She also conceded that she administered the chicken pos vaccine in the yard and that she drew blood from patients B and D outdoors. According to Dr Eden the outdoor treatment Appellant engaged in was not justified, regardless of the alleged contamination in the Appellant's office buildings. He explained that while contamination in the offices would have necessitated alternative venues for the examinations, such outdoor examinations were inconsistent with the appropriate standard of care. Furthermore,the Board did not believe that every building owned by Appellant was contaminated as suggested in her testimony. Appellant failed to present any evidence during the hearings to substantiate her claims that each of her office buildings that she inhabited was contaminated. Additionally, Appellant made admissions to the effect that she permitted her medical assistant to go in and out of the allegedly contaminated buildings while she waited outside. Appellant also testified that everything, including patients' medical records, had been contaminated. Yet at the same time, admitted that she placed these same records in her parents' home and would have her medical assistant retrieve them when they were needed. Based on the aforementioned

evidence, this Court concludes that there was substantial evidence in support of the Board's determination that Appellant's outdoor treatment constituted unprofessional conduct. Williams Syndrome Appellant next argues that the evidence presented during the proceedings demonstrates that Appellant's differential diagnosis that Patient F might suffer from " William's syndrome" was not unfounded. Appellant asserts that the Board's conclusion that later examination revealed nothing wrong with Patient F is contrary to the evidence that the Board heard. In light of the cumulative testimony presented during the hearings, this Court finds that there was substantial evidence supporting the Board's finding that the Appellant's medical treatment of Patient F constituted unprofessional conduct. Under 5-37-5.1 (19) discussed in the preceding section, the incompetent or negligent practice of medicine is sufficient for the Board to find that a physician has committed unprofessional conduct. During the proceedings the Board heard Dr Eden testify that a competent physician would not have suspected that Patient F had Williams syndrome. Furthermore, according to Witness Three whom the Board found to be credible, when Witness Three took Patient F for a heart exam the doctor said that there was no reason for additional tests to be conducted. Though Appellant claims her medical diagnosis was appropriate, Appellant failed to present any experts to confirm her assertions that her medical treatment of Patient F was reasonable. While our Supreme Court has not directly addressed the degree of discretion a medical board ought to be afforded when making a decision regarding the adequacy of a physicians' care, this issue has been addressed by other courts. Other jurisdictions have concluded that a board which has the benefit of expert testimony in reaching its decision should be afforded a great deal of deference in its determinations as to what constitutes an extreme departure from the ordinary standard of care. See Livingston M.D. v Arkansas State Medical Board 701 S.W. 2d 361 (Ark 1986). Thus in

Livinigston M.D. v Arkansas State Medical Board the Supreme Court of Arakansas affirmed suspension of the appellant's license where the appellant negligently led a patient to believe that she was pregnant for a period of four months. Though the appellant in that case offered expert testimony to the effect that the appellant's records demonstrated an adequate standard of care, the Court concluded that a physician's conduct does not have to rise to the level of malpractice for it to constitute unprofessional conduct warranting suspension of a license. See id. Similarly in the present case this Court finds that there was substantial evidence in the record to support the Board's conclusion that Appellant's treatment of Patient F did not conform to the ordinary standard of care and warranted a sanction that the Board deemed appropriate. Record Transfer Issue Next, Appellant argues that the Board's finding that Appellant refused to transfer records " until all fees were paid for services rendered" is clearly erroneous in light of the substantial weight of the evidence. The Appellant fervently denies wrongfully withholding Patient E's and F's records despite the testimony of Patient E's and F's parents that Appellant made the payment of a disputed bill a condition precedent to sending said records.Upon review of the Board's decision, this Court finds that there was substantial evidence on the record to support the Board's finding that the Appellant acted unprofessionally in failing to transfer patients' records to a new pediatrician in a timely manner. As stated above, this Court will not substitute its judgment for that of the Board with respect to credibility of witnesses. See Tierney et al 793 A.2d 210,213 (R.I. 2002) Thus no new determination will be made here as to the credibility of the parents of Patients E and F where the Board has already found these witnesses to be credible. See id. As such this Court is confined to making a determination solely on the basis of whether there was competent evidence on the record to support the Board's finding that the Appellant acted unprofessionally in her

transferring of patients' records See id at 212. With respect to this issue, the parents of E and F both of whom the Board found credible, each testified that the Appellant refused to transfer their daughters' medical records until they paid the bill Appellant claimed they owed. In reviewing copies of the Appellant's billings to the family, the record reveals that the services rendered and the amounts shown as due on the bills were incomprehensible to the Board. Appellant's refusal to transfer records until the parents of Patients E and F paid the amount shown on bill was substantiated by the fact that Appellant did not turn over the patients' record until the Department of Health intervened. Thus, this Court finds substantial evidence in the record for the Board's finding that Appellant acted unprofessionally in the transferring of patient's' records. Evaluation Issue Appellant argues that she is willing to be examined by a psychiatrist but not one who is subject to the Board's control., Appellant assets that she has been examined by another psychiatrist and it has been determined that she suffers from no mental impairment. Therefore, there is no reason why she should not be permitted to practice medicine. This Court finds substantial evidence on the record to support the Board's finding that the Appellant had not cooperated with the Board's order that Appellant submit to a psychiatric examination in accordance with the conditions provided by the Board. Pursuant to 5-37-5.2 (e) (2) the Investigating Committee of the Board may exercise the authority afforded by 5-37-1.3(10) to assist the Board if the Investigating Committee determines the licensee is suffering from an impairment. The Investigating Committee was enlisted by the Director of Health to investigate the Appellant's behavior after a complaint was filed against the Appellant in 1998. After conducting a review of the Appellant, which included interviewing the Appellant and potential witnesses, the Committee felt it appropriate for Appellant to submit to a psychiatric examination. Based on the evidence presented, the Board concluded that the

Appellant had not as yet submitted to an evaluation. During Court hearings, the Appellant expressed reluctance to submit to an examination by a psychiatrist pre-approved by the Board as opposed to one of her own choosing. Thus, this Court finds that there is substantial evidence in support of the Board's finding that the Appellant did not comply with its order.
Rhode Island Hospital Application Appellant argues that her Rhode Island Hospital application did not contain false information and asserts that her usage of the word" acceptance" in relation to Yale and Brown was in relation to her acceptance as a match candidate for those programs. Appellant further contends that their reference to her two years of medial school at Case Western University was not a misrepresentation because she accurately stated her role as a PhD. Candidate(registered bu not matriculated in the medical school), accurately identified the school where she earned her medical degree and identified all her residencies and internships. This Court finds that substantial evidence existed in the form of testimony and exhibits to conclude that the Appellant committee unprofessional conduct in the submission of her Rhode Island application. As the Board reviews Appellant's application for staff privileges and the information obtained form the Rhode Island Hospital Staff Credentials Committee, this Court must give deference to the Board as the trier of fact in finding that the Appellant made several misrepresentations in her efforts to obtain staff privileges. See Rhode Island Public v Telecommunications Authority et al v Rhode Island Labor Relations Board et al 650 A.2d 479,485 (R.I. 1994) Based on the Board's thorough evaluation of the exhibits regarding this matter, this Court finds that there was substantial evidence to support the Board's finding that Appellant " provided false information to the Rhode Island Hospital Credentials Committee in an effort to gain staff privileges at the hospital." (Administrative Board Decision at 4). The Board found that the Appellant made several misrepresentations on her application including her

affiliation with Case Western Reserve University Medical School her admission to Yale and Brown residency programs and her alleged voluntary departure from two different internships. This Court finds that there was competent evidence to justify the Board's findings on this charge.
III. Adequacy of Evidence Next Appellant assets that certain testimony permitted in the hearings constituted hearsay that unfairly biased the proceedings. One particular example that Appellant focuses on is Witness One's testimony that when Patient B dialed star 69 after a hag-up Appellant answered. Based on rules governing administrative hearings and the nature of the hearsay evidence, this court finds that the Board's admittance of hearsay evidence during the hearings did not unfairly bias the proceedings. This court has consistently acknowledged that the parameters for admitting relevant evidence in administrative proceedings are broad in scope. " Administrative hearings are not held to the same evidentiary standards as criminal or even judicial civil proceedings. Hearsay is quite acceptable in administrative hearings." In re Joseph A. Cross 617 a.2d 97, 102 (R.I. 1992) (quoting Craig v Pare 497 A.2d 316, 320 (R.I. 1985)) Thus is In re Joseph A Cross the Supreme Court held that admission of a complaint letter against appellant in an administrative hearing was permissible because hearsay doctrines were not applicable. See id. Similarly, in the present case traditional hearsay rules were not applicable and the hearsay evidence in question was clearly relevant to the proceedings. Consequently, this Court finds that the Board's decision to permit such hearsay testimony did not prejudice the Appellant's right to a fair and unbiased proceeding. IV Arbitrary and Capricious Next, Appellant argues that in light of the evidence presented, the Board's decision is arbitrary and capricious. Appellant contends that the testimony of the States' witnesses directly contradict the Board's findings. In support of her argument, Appellant makes reference to certain statements by the State's witnesses during their testimony, and

claims that they pose inconsistencies in the Board's case against her. Upon a thorough review of the Board's decision, this court finds that the Board's determination that Appellant was guilty of unprofessional conduct in the practice of medicine was not arbitrary and capricious.The Supreme Court of Rhode Island has repeatedly declared that the arbitrary and capricious standard of review is limited in scope and affords great deference to agency decisions. " Use of the arbitrary and capricious standard means that reviewing courts will uphold administrative decisions...as long as the administrative decisions were rational, logical, and supported by substantial evidence." Domingo Goncalves v NMU Pension Trust 818 A.2d 678, 682-83 (R.I. 2003) (citinig Doyle v Paul Revere Life Insurance Co., 144 F.3d 181,184 (ist Cir.1998)). See also Even J. Connor v, Paul Bjorkland et al No.2002-720-A., slip op, at 5 (R.I. filed October 31, 2003) (here in a civil action the Rhode Island Supreme Court refused " to second-guess the trial justice's credibility findings" where the defendants cited " certain discrepancies between plaintiff's trial testimony and other evidence contained in the record").In applying the arbitrary and capricious standard to the present case, this Court recognizes that under R.I. Gen Law 5-37-5.1 the Board of Medical Licensure and Discipline is afforded wide discretion in making determinations as to what constitutes unprofessional conduct. The statute specifically reads that unprofessional conduct is not limited to the thirty one items specifically laid out in the statute and provides that the items mentioned " may be further defined by regulations established by board with prior approval of the director." R.I. Gen Laws 5-37-5.1 In the case at bar, the Board heard from several witnesses including the mother and father of patients A.B.C.D the mother and father of patients E and F; Dr Eden, an expert in the field of pediatrics; and the Appellant herself. Additionally the Board reviewed 28 exhibits. Throughout the hearings, Appellant had numerous opportunities to call witnesses on her behalf and submit evidence to substantiate

her claims. At no time during the proceedings did Appellant attempt to do so. Moreover, the Board's decision included a thorough analysis of its finding on each charge and explained in detail the evidence upon which they based their decision. Consequently, this court finds that the Board's decision was not arbitrary and capricious. V. Investigatory, Adjudicatory, and Advisory Functions The Appellant argues that Attorney Bruce McIntyre (McIntyre) who prosecuted the instant action, commingled functions as prosecutor and witness. Appellant contends that throughout the proceedings McIntyre injected questions that suggested McIntyre's firsthand knowledge of events and his own characterization of what had occurred. The Board counters by arguing McIntyre's role as prosecutor was wholly appropriate and did not unfairly taint the proceedings. The Board argues that this subject is thoroughly covered by Rule 3.7 of the Rhode Island Rules of Professional Conduct. The Board further contends that Appellant's attempt to prohibit McIntyre from acting as prosecutor in the present case is a harassing technique that is without merit. This Court finds that the Board's decision to allow Attorney Bruce McIntyre to prosecute the case was entirely proper. In El Gabri v Rhode Island Board of Medical Licensure and Discipline 1988 R.I. Super. LEXIS 36, the Rhode Island Superior Court addressed a similar argument made by an appellant who was challenging the Board's decision to revoke his license. The appellant claimed that McIntyre's role as prosecutor and advisor to the Board was unconstitutional. The Superior Court rejected appellant's argument and concluded that McIntyre's dual role as prosecutor and advisor to the Board was not violative of due process because nothing in the record demonstrated that McIntyre exercised influence over the Hearing Committee. El Gabri 1998 R.I. Super LEXIS at 33-34. " Broadly speaking, the separation of functions that prevails in a modern administrative agency, allotting the prosecutorial function to a staff of attorneys or other personnel who will not participate in the eventual decision is a common and recommended

feature of American administrative enforcement activity. " La Petite Auberge v Rhdoe Island Comm'n for Human Rights 419 A.2d at 284 (R.I. 1980). As was the appellant's argument in El Gabri the argument made by the Appellant in the present case is without merit. There was nothing in the record to suggest that Attorney McIntyre exercised any influence over the Hearing Committee's decision. Moreover, the record demonstrates that McIntyre acted squarely within the boundaries of his role as prosecutor. VI. Sanctions Finally, during court hearings, the appellant argued that the sanction of indefinite suspension of her medical license was excessive in light of other medical board disciplinary sanctions that could have been imposed. The Board holds that suspension of Dr Mills' license is the appropriate sanction until she submits to physical and psychiatric examinations conducted by medical professionals pre-approved by the Board. This Court finds that the Board did not err in using their discretion to reach what they deemed to be an appropriate sanction for Dr Mills' unprofessional conduct. The Court will not substitute its judgment for that of the Board concerning the appropriate discipline for the Appellant, as a Medical Board is in the best position to make determinations as to what constitutes an appropriate sanction See Jack Marrs, M.D. v Michigan Board of Medicine 375 N.W. 2d 321, 324 Mich 1985. (holding that the Court of Appeals erred in finding that the Board abused its discretion in imposing a one-year suspension for a doctor's failure to conform to prevailing minimum professional standards); see also State of Rhode Island Department of Corrections v Rhode Island Brotherhood of Correctional Officers 725 A.2d 296 (R.I. 1999)(declaring that an arbitrator improperly substituted his judgment for that of the director regarding what the proper disciplinary action should be). A Medical Board is empowered to impose discipline as it deems proper. Bryce v Board of Medical Quality Assur., 184 Ca. App 3d 1471 (Cal App 4 Dist. 1984) Regarding this imposition of discipline, " It is well settled that in reviewing

the penalty imposed by an administrative body which is duly constituted to announce and enforce such penalties, neither a trail court nor an appellate court is free to substitute its own discretion as to the matter; nor can the reviewing court interfere with the imposition of a penalty by an administrative tribunal because in the court's own evaluation of the circumstances the penalty appears to be too harsh. Such interference ....will only be sanctioned when there is an arbitrary capricious or patently abusive exercise of its discretion. Shakin v Board of Medical Examiners 254 Cal App 2d 102.(Cal App 2nd Dist 1967). Thus this court finds that the suspension of Appellant's license was the appropriate sanction imposed in relation to the well-supported findings of the Board and did not constitute an abuse of discretion. During oral arguments before this court, the appellant requested that this court modify the sanction to include a provision that a psychiatrist of the Appellant's own choosing be permitted to attend the psychiatric examination the Board is requiring her to undergo before she can be considered for reinstatement. This court's consideration of such a request would be inappropriate and would constitute a substitution of its judgment in place of the Board's as to the conditions of Appellant's reinstatement. Conclusion After review of the entire record this Court finds the decision of the Board was supported by the reliable probative and substantial evidence in the record, and was not affected by error of law. Furthermore, this Court finds that the Board's decision was not arbitrary or capricious or an abuse of discretion. Thus the substantial rights of Appellant have not been prejudiced. For the reasons stated herein, the decision of the Board, which finds the Appellant in violation of 1956 R.I.G.L. 5-37-5.1 is affirmed. Supreme Court No: 03-626-M.P. Geraldine Mills, M.D. v. Patricia Nolan ORDER The petition for writ of certiorari is denied. Entered as an Order of this Court this 23rd day of September 2004. By Order, /s/ J Michael Eagen

(1)

No. 04-739

In The Supreme Court of the United States

GERALDINE MILLS, M.D.,

Petitioner,

v.

PATRICIA A. NOLAN, M.D., M.P.H., DIRECTOR DEPARTMENT OF HEALTH,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Rhode Island

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTERSTATEMENT OF QUESTIONS PRESENTED AND OBJECTION TO THE JURISDICTION OF THE COURT TO GRANT A PETITION FOR A WRIT OF CERTIORARI

1. Whether pursuant to the requirements of 28 U.S.C. § 1257(a) and the Rules of the Supreme Court of the United States the Petitioner has demonstrated that this Court should issue its Writ of Certiorari.

(Negative answer sought by Respondent).

The Petitioner has not met the required demonstration that the Supreme Court of the United States has jurisdiction in this matter as is shown in the "Questions" section of Petitioner's brief. The mere mention of "due process" in Petitioner's "Questions" fails to meet the test of demonstrating foundational support to justify jurisdiction for the Court to grant a Writ of Certiorari.

The Respondent objects to the questions in Petitioner's brief as they fail to state accurately a representation of all the state agency administrative proceedings or the subsequent appellate sequelae. Supreme Court Rule 14(4) states the Court's authority to deny this Petition because the Petitioner has failed to state with accuracy, brevity and clarity the questions in order to apprise the Court of the issues requiring its consideration.

Petitioner's "Questions" are devoid of requisite support for jurisdiction. The Respondent objects to these questions in their entirety as they include incorrect statements that will be discussed in "Misstatements" pursuant to Supreme Court Rule 15(2).

COUNTERSTATEMENT OF QUESTIONS PRESENTED AND OBJECTION TO THE JURISDICTION OF THE COURT TO GRANT A PETITION FOR A WRIT OF CERTIORARI – Continued

Petitioner has erroneously postulated that she has presented a federal claim to this Court. The Petitioner has failed to demonstrate that a federal claim or federal question exists.

Petitioner's "Questions" include presuppositions of incorrect and untrue factual assertions, including the misstatement that Mr. McIntyre was a member of the Board of Licensure and Discipline. Mr. McIntyre is not now and never has been a member of the Board of Licensure and Discipline.

There are also numerous factual assertions that are outside and beyond the certified record of the proceedings before the Board.

Petitioner's questions are essentially an attempt to retry the case before the Board under a false premise with a generalized use of the words "due process," and a use of misstatements of facts and material outside of the certified record below.

Petitioner's questions fail to demonstrate anything that was not exclusively cognizable under state law. In Rhode Island, hearings before administrative agencies are tried at the administrative agency level pursuant to the Rhode Island Administrative Procedures Act R.I.G.L. Chapter 42-35. On appeal, pursuant to R.I.G.L. § 42-35-15, the record established before the state agency is certified to the Superior Court, which conducts a review of the record established at the administrative agency. The

COUNTERSTATEMENT OF QUESTIONS PRESENTED AND OBJECTION TO THE JURISDICTION OF THE COURT TO GRANT A PETITION FOR A WRIT OF CERTIORARI – Continued

administrative agency certifies that record for Superior Court review which is government by R.I.G.L. § 42-35-15(g).

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MISSTATEMENTS IN PETITIONER'S BRIEF

The Petitioner in her brief has made numerous misstatements, many of them drafted in the posture of an assumption on Petitioner's part as to what took place or what happened. It is impossible because of the nature of the Petitioner's brief to enumerate all of them without extending unduly this recitation of misstatements. Accordingly, the Respondent, without admitting to any of the statements made in Petitioner's Brief, except those that are consistent with the record reflected by the decision of the Board and the Superior Court Justice who heard the case at the Superior Court level, is unable to accept the statement of facts and contentions set forth by the Petitioner and does not admit to same.

The following is a partial list of misstatements occurring in Petitioner's brief which are rejected by the Respondent:

1. The assertion that statements and expressions of prosecuting counsel, Bruce W. McIntyre, were taken as evidence and allowed as admissions of necessary supporting evidence, that the meaning of the testimony was taken out of context, and that parts of statements were deleted. Petitioner's Brief Page 3.

2. The assertion of "misrepresentations and violations of law." Petitioner's Brief Page 4.

3. Litany of events engaged in by Mr. McIntyre resulting in deprivation of sustentative and procedural due process of Mills from the inception of the case. Petitioner's Brief Page 4.

4. The assertion relating to motivations and the allegation of malice. Petitioner's Brief Page 4.

5. Personal derogatory assertions against Mr. McIntyre. Petitioner's Brief Page 4.

6. Assertions alleging threatening calls to her private office by Attorney McIntyre. Petitioner's Brief Page 6.

7. Assertions of harassments, slander and interference with her medical practice. Petitioner's Brief Page 6.

8. Assertions with respect to creating problems and removing Mills from practice and destroying her business. Petitioner's Brief Page 6.

9. Petitioner's assertions that McIntyre was involved in actions of misconduct. Petitioner's Brief Page 6.

10. Assertions relating to not being represented by conduct and matters connected therewith and the alleged quoted statement "I never lose in court." appearing on page 7 of Petitioner's brief.

11. Assertion that the Petitioner was the subject of myriads of violations by legal counsel of the medical board and assertions of him being a witness. Petitioner's Brief Page 8.

Mr. McIntyre never appeared as a witness in this case.

12. Assertions surrounding the summary suspension. Petitioner's Brief Page 9.

Petitioner had made in October 1999 anonymously a unfounded telephone complaint to the Department of Children, Youth, and Their Families against the parents of patients A, B, C and D, suggesting child abuse by the parents of patients of A, B, C and D.

13. Assertions on pages 9 and 10 concerning timeframes for hearing and timeframe on immediate suspension. Continuances were essentially at the request of Petitioner's counsel and due to the fact that Petitioner through counsel had requested discovery depositions and that Petitioner was represented by different lawyers at different times.

14. Assertion that at no time the administrative hearing was conducted in accordance with the administrative procedures act. Petitioner's Brief Page 10.

15. Suggestion that Mr. McIntyre was a member of the Board. Petitioner's Brief Page 10 and 11.

Mr. McIntyre was never a member of the Board, at no time participated in any adjudicative process. Mr. McIntyre's sole role was to act as prosecuting attorney on behalf of the investigating committee. At no time did Mr. McIntyre participate in any decision-making process.

16. During the hearings the Board was represented by a separate attorney as is clear from the record and is referred to in the record as the hearing officer who made the rulings during the trial concerning evidence and the introduction of evidence and other procedural matters.

17. Assertions that there were violations of the state's statute by reason of Mr. McIntyre's role, concerning the production of the complaint and the prosecution of the case before the Board. Petitioner's Brief Page 12.

18. Assertion that the sole basis for the Board's demand that Mills undergo an examination/evaluation was the one complaint of Deborah Cinquegrana. Petitioner's Brief Page 13.

19. Assertions that the certified lower record does not support the conclusions of the Superior Court Justice or the Board. Petitioner's Brief Page 14.

20. Assertions concerning the circumstances of the release of confidential health care information. Petitioner's Brief Page 14.

21. Assertions and suggestions concerning the background and basis relating to the request for a psychiatric evaluation. Petitioner's Brief Page 15.

22. Assertions concerning the background and circumstances having to do with the characterization of medical disorder and examination of information thereof and continuing circumstances surrounding same. Petitioner's Brief Page 15 and 16.

ARGUMENT

1. INTRODUCTORY STATEMENT

In the proceedings below, the Board of Medical Licensure and Discipline ("Board") issued an Order summarily suspending the license of Geraldine Mills, M.D. to practice medicine in the State of Rhode Island. Pursuant to R.I.G.L. § 5-37-8, a hearing date was scheduled within ten (10) days of the suspension. Petitioner's counsel requested a continuance and then a further continuance and then Amended Specification of Charges were served on the Petitioner setting forth seven counts of unprofessional conduct in violation of R.I.G.L. § 5-37-5.1. After several procedural motions were heard, and disposed of by the Board acting under Chapter 5-37 of the Rhode Island General Laws, hearings on the merits of the charges began

on August 23, 2000 and continued through December 7, 2000. Petitioner's counsel had earlier been granted a continuance to enable discovery which involved depositions. During the hearings the Board received 28 exhibits and heard testimony from six witnesses: the mother and father of female patients A, B, C and D; the mother and father of female patients E and F; a Board certified pediatric physician, who testified as an expert for the Board; and Dr. Mills. The Petitioner did not present any witnesses to testify on her behalf.

After the defense had rested its case and legal argument had been submitted, the attorney who had represented the Petitioner through the hearing process was discharged by the Petitioner. The Petitioner engaged new counsel who moved to reopen the record of the proceedings for the taking of additional evidence. The Board conducted a hearing on that motion on March 28, 2001, and filed a written Interim Order denying that motion. Thereafter, on May 24, 2001, Petitioner's counsel filed a second motion to reopen the proceedings to which Respondent objected. Thereafter, on June 11, 2001, the Petitioner, acting pro se, filed a third motion to reopen the proceedings. In its final administrative decision of July 10, 2001, the Board noted it had considered and denied the Petitioner's second and third motions to reopen them for the reasons which it had set forth in its Interim Order denying the Petitioner's original motion to reopen. The administrative decision of the Board is attached hereto as part of the appendix.

Following the Board's decision, and within the time permitted by law, the Petitioner filed a Complaint in the Rhode Island Superior Court pursuant to R.I.G.L. § 42-35-15 seeking judicial review of the Board's decision. Petitioner has failed to demonstrate that a federal question

was raised at this first level of judicial review in the Superior Court of the State of Rhode Island.

The entire record of all of the administrative proceedings was filed with the Superior Court as required by the Administrative Procedures Act, R.I.G.L. § 42-35-15.

The Petitioner, through counsel, while the matter was pending in the Superior Court, filed a petition to expand the Certified Record that had been made during hearings before the Board and to add additional evidence. The Board objected. The Superior Court after hearing and argument denied the Petition to Expand the Record and to add additional evidence. Superior Court Justice Procaccini denied the Petition to add additional evidence, and he proceeded to hear the case on the merits.

Justice Procaccini wrote an extensive decision that was filed in the Superior Court on November 13, 2003 affirming the decision and order of the Board. *Mills v. Nolan,* 2003 R.I. Super. LEXIS 146. A copy of the written decision is attached as part of the appendix in this matter. The Petitioner then appealed to the Rhode Island Supreme Court by Petition for Writ of Certiorari. On September 23, 2004, the Rhode Island Supreme Court denied the Petitioner's Petition for a Writ of Certiorari with a one sentence order which read "The petition for writ of certiorari is denied." (Supreme Court No. 03-626-M.P.)

2. FEDERAL JURISDICTION NOT SHOWN.

Rule 14(g)(i) of the Supreme Court Rules require that the federal questions be identified with a showing of the method or manner in which the federal question was raised and the way in which the federal question was

passed upon by the court. Further, the rule requires the quotations of specific portions of the record or a summary thereof with specific references to the place where the federal question appears. This is required in order to show that the federal question was raised timely and properly and that the Supreme Court of the United States has jurisdiction to review the judgment of the highest court of the state by Writ of Certiorari.

The Petitioner in this case has failed to demonstrate compliance with Rule 14(g)(i). The Rhode Island Supreme Court denied the Petitioner's Petition for a Writ of Certiorari with a one-sentence Order, that read: "The petition for writ of certiorari is denied." Rhode Island caselaw requires that constitutional claims be stated in clear and direct language with specific article, section, and clause in the federal or state constitution set forth. Federal law recognizes that state procedural law controls with respect to the raising of constitutional questions for the purpose of showing that a federal question was presented to the highest court of the state. General assertions have been made by the Petitioner, but the Petitioner has not demonstrated from the certified record the presentation of a federal question to the Rhode Island Supreme Court. Petitioner's request for Writ of Certiorari before this Court lacks a factual predicate to the certified record with respect to the raising of a federal question before the Rhode Island Supreme Court. Petitioner has failed to satisfy the requirements of U.S.C. § 1257(a) and has utterly failed to show that a federal claim under federal law was adjudicated by the Rhode Island Supreme Court adversely to the Petitioner.

3. FEDERAL QUESTIONS MUST BE RULED UPON BY STATE COURT.

This Court will not review matters alleged to be federal claims that were not passed upon or pressed at the state court level and it will not consider as an alleged federal claim, a claim that was neither addressed by or properly presented to the state court. *Campbell v. Louisiana,* 523 U.S. 392, 118 S. Ct. 1419, 140 L. Ed. 2d 551, 172 A.L.R. Fed. 597 (1998). Jurisdiction of the Supreme Court is dependent upon a showing from the record that a federal claim was adequately presented to the state court and that the alleged constitutional claim related to federal law rather than to state law. *Webb v. Webb,* 451 U.S. 493, 101 S. Ct. 1889, 68 L. Ed. 2d 392 (1981). The alleged federal claim must be sufficiently identified so as to fairly apprise the reviewing court of the substantial nature of the potential federal claim. *Anderson, Warden v. Harless,* 459 U.S. 4, 103 S. Ct. 276, 74 L. Ed. 2d 3 (1982).

Even if a federal question is shown to exist, the Petitioner must further show that the federal question is real and substantial. *Zucht v. King,* 260 U.S. 174, 43 S. Ct. 24, 67 L. Ed. 194 (1922); *Palmer Oil Corp. v. Amerada Petroleum Corp.,* 343 U.S. 390, 72 S. Ct. 842, 96 L. Ed. 1022 (1952); *Waters-Pierce Oil Company v. State of Texas,* 212 U.S. 86, 29 S. Ct. 220, 53 L. Ed. 417 (1909); *Arkansas Southern Railroad Company v. German National Bank,* 207 U.S. 270, 28 S. Ct. 78, 52 L. Ed. 201 (1907).

The record presented to this Court must affirmatively demonstrate that the state court had the relevant federal issues before it. *Bankers Life and Cas. Co. v. Crenshaw,* 486 U.S. 71, 108 S. Ct. 1645, 100 L. Ed. 2d 62 (1988). Indeed, the *Bankers Life* case held that at the *minimum*

there should be no doubt from the record that a claim under a federal statue or the U.S. Constitution was presented in the state courts and that those courts were apprised of the nature or substance of the federal claim at the time and in the manner required by the state law. Emphasis was put on the requirement that the record demonstrate the existence of the federal claim. If the record fails to indicate that a federal question was presented to the state court, then this Court will not take judicial notice or infer that a federal question had been involved in the case. *Yazoo & M.V.R. Co. v. Adams*, 180 U.S. 41, 21 S. Ct. 256, 45 L. Ed. 415 (1901); *Bakery & Pastry Drivers v. Wohl*, 313 U.S. 572, 61 S. Ct. 960, 85 L. Ed. 1530 (1941). This Supreme Court, when the highest state court has failed to pass upon a federal question, will assume that the omission was due to want of proper presentation in the state court unless the aggrieved party before this Court shall affirmatively demonstrate otherwise. *Board of Directors of Rotary Instructional et al. v. Rotary Club of Duarte et al.*, 481 U.S. 537, 107 S. Ct. 1940, 95 L. Ed. 2d 474 (1987).

Additionally, the United States Supreme Court will not decide federal constitutional issues raised for the first time on review of state court decisions. *Cardinale v. Louisiana*, 394 U.S. 437, 89 S. Ct. 1161, 22 L. Ed. 2d 398 (1969).

Rule 14.1(g)(i) requires particularization of when, where and how the federal questions were raised in the state court. A general citation of references in an appendix without the aforesaid specificity does not satisfy the responsibility to point out exactly when, where and how federal questions were passed upon or pressed before the state court. It has been held that when the highest state

court is silent on a federal question before an appellate court, then the Supreme Court of the United States assumes that the issue was not properly presented. The Petitioner has the burden of showing that the federal claim was properly presented to the state court. Additionally, the Petitioner must show that the alleged federal claim was raised at the time and in the manner required by state law. *Adams v. Robertson*, 520 U.S. 83, 117 S. Ct. 1028, 137 L. Ed. 2d 203 (1997). State procedural law controls with respect to the manner, method and time necessary to raise a federal question before the state's highest court. *Beck v. Washington*, 369 U.S. 541, 82 S. Ct. 955, 8 L. Ed. 2d 98 (1962).

General references to the Constitution of the United States are insufficient to meet the criteria required to identify a federal question. One is not permitted in the state court to invoke generally the Constitution of the United States. The record is required to show without doubt that a federal claim was presented to the state court and that the state court was apprised of the nature or substance of the federal claim at a time and in a manner required by state law. *Bankers Life and Cas. Co. v. Crenshaw, supra*. See also *Board of Directors of Rotary Instructional et al. v. Rotary Club of Duarte et al., supra.*

Merely to refer to a constitutional issue in a pleading is inadequate if the federal question is not adequately substantial or real or if the state court did not pass on the alleged federal question presented in the pleading. *Seaboard Air Line Ry. v. Padgett*, 236 U.S. 668, 35 S. Ct. 481, 59 L. Ed. 777 (1915). See also *Bowe v. Scott*, 233 U.S. 658, 34 S. Ct. 769, 58 L. Ed. 1141 (1914).

A mere reference to a constitutional issue without more does not raise a federal question since this Court may assume that the challenge was only based on a state Constitution and not a federal question. *Endowment & Benev. Ass'n of Kansas v. State of Kansas*, 120 U.S. 103, 7 S. Ct. 499, 30 L. Ed. 593 (1887).

In addition, one is not permitted to postulate that federal questions were raised in the state court by references to briefs and statements which are not part of the record transmitted to this Court. *Lynch v. People of New York ex rel. Pierson,* 293 U.S. 52, 55 S. Ct. 16, 79 L. Ed. 191 (1934).

4. REQUIREMENT THAT THE STATE COURT ACTUALLY DECIDE THE FEDERAL ISSUE.

For a state court decision to merit review before this Court, the record itself must show that the subject federal question was either decided by the state court or that the judgment rendered by the state court could not have been given without deciding the subject federal question. *Harding v. People of State of Illinois*, 196 U.S. 78, 25 S. Ct. 176, 49 L. Ed. 394 (1904). Further, the Petitioner on Certiorari must show more than a federal question being raised or one that might have been decided by a state court rather the record must demonstrate expressly or by necessary implication that the alleged federal question was actually decided by the state court. *Endowment & Benev. Ass'n of Kansas v. State of Kansas, supra.*

In a case where a state court has failed to expressly pass upon a federal question, the presumption is that the omission was due to a failure on the part of the parties to properly present the federal question to the state court

unless the petitioner before the United States Supreme Court can affirmatively show to the contrary. *Adams v. Robertson, supra*. See also *Exxon Corp. v. Eagerton,* 462 U.S. 176, 103 S. Ct. 2296, 76 L. Ed. 2d 497 (1983).

5. ADEQUATE NONFEDERAL GROUND FOR STATE COURT DECISION.

If there is an adequate nonfederal ground for the state court decision which independently and adequately supports the state court judgment, then such adequate nonfederal ground will preclude United States Supreme Court review on Certiorari. *Radio Station WOW v. Johnson,* 326 U.S. 120, 65 S. Ct. 1475, 89 L. Ed. 569 (1945).

In a case where there is no opinion written by the highest court of the state, and it appears that the state court judgment might have rested upon a nonfederal ground, then the United States Supreme Court will decline jurisdiction. *Stembridge v. State of Ga.,* 343 U.S. 541, 72 S. Ct. 834, 96 L. Ed. 1130 (1952).

In the event that a state court judgment rests on one federal ground and another ground that is nonfederal, the United States Supreme Court has determined that it is without jurisdiction to review the case where the nonfederal ground is independent of the federal ground and the nonfederal ground is adequate to support the judgment. *Lee v. Kemna,* 534 U.S. 362, 122 S. Ct. 877, 151 L. Ed. 2d 820 (2002).

If a petitioner fails to comply with applicable state procedures concerning the making of a federal claim, then such failure will be held to be an adequate state ground for denial of certiorari. *In Re Lamkin,* No. 275, Misc. Supreme

Court of the United States, 355 U.S. 59, 78 S. Ct. 137, 2 L. Ed. 2d 107 (1957).

The rule precluding United States Supreme Court review of state court cases where an adequate and independent state ground exists is applicable with equal force whether the state-law ground is substantive or procedural. *Lee v. Kemna, supra.*

6. FEDERAL APPLICATION OF THE RAISE OR WAIVE RULE.

A party in the state court is obliged when raising a federal issue to raise it in a timely fashion and in accordance with state practice. A party failing to do so can be said to have waived the federal question and such a waiver will constitute an adequate independent ground of state court decision which then constitutes a bar to review by the United States Supreme Court. *Sochor v. Florida,* 504 U.S. 527, 112 S. Ct. 2114, 119 L. Ed. 2d 326 (1992). Constitutional issues must be raised at the trial level, and if not so raised, they will be deemed waived. This requirement is sometimes referred to as administrative issue-exhaustion. Appellate courts will not give consideration to issues not raised below. This principle is particularly applicable to matters involving adversarial administrative proceedings. *Sims v. Apfel,* 530 U.S. 103, 120 S. Ct. 2080, 147 L. Ed. 2d 80 (2000).

7. CONSTITUTION OF THE STATE OF RHODE ISLAND.

The Rhode Island Constitution has its own due process clause which says among other things:

> " . . . No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied equal protection of the laws. . . . "Constitution of Rhode Island – Declaration of Rights – Article 1 § 2.

8. RHODE ISLAND LAW REQUIRES SPECIFICITY IN THE STATING OF CONSTITUTIONAL CHALLENGES.

Rhode Island Supreme Court decisions do not allow constitutional challenges to be alleged in general fashion. See *Bayview Towing, Inc. v. Stevenson,* 676 A.2d 325 (R.I. 1996). There a complaint alleged some fourteen violations of complainant's constitutional rights complaining that a state agency hearing officer violated complainant's "First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article 1, sections 5, 6, 10, 13, 14 and 24, and Article VI, section 1 of the Rhode Island Constitution." The Supreme Court of Rhode Island noted that this kind of "machine-gun assault" is improper and insufficient to warrant judicial consideration. The court noted that "[t]he complaint in this case falls victim to the deficiencies above noted and leaves barren the complaint except for its request for a stay of the nonexistent final agency decision." The court cited *Creditors' Service Corp. v. Cummings,* 57 R.I. 291, 304-05, 190 A. 2, 10 (1937); *Town of Foster v. Lamphere,* 117 R.I. 541, 545, 368 A.2d 1238, 1240 (1977); *Mesolella v. City of Providence,* 508 A.2d 661, 669 (R.I. 1986). The *Bayview* court stated at page 329:

> "He or she must state in clear and direct language which specific article, section and clause in the Federal or the State Constitution is alleged

to have been violated. To simply state that, for example, the fourteenth Amendment, as in this complaint, "without also specifying whether it is due process, privileges and immunities, or equal protection clause which is pertinent," is insufficient for certification."

9. RHODE ISLAND LAW RE: REOPENING FOR ADDITIONAL EVIDENCE.

The Rhode Island Supreme Court places serious restrictions on a party seeking to reopen after his or her case is closed. See *Roger Williams College v. Gallison,* 572 A.2d 61 (R.I. 1990). In Rhode Island the authority to remand back to a quasi-judicial body should not be exercised in such circumstances as to allow a person another opportunity to present a case when the evidence presented initially is inadequate. One cannot reopen on the grounds of new evidence when the evidence was available during the initial hearings. See *Corrente v. Town of Coventry,* 116 R.I. 145, 352 A.2d 654 (1976). See also *State v. Calenda,* 787 A.2d 1195 (R.I. 2002). The Rhode Island Superior Court has applied these rules to appeals from administrative agencies. See *Chattman v. City of Woonsocket,* 2003 R.I. Super. LEXIS 70 (April 15, 2003), applying *Roger Williams College v. Gallison, supra.* See also *Caito v. Juarez,* 795 A.2d 533 (R.I. 2002).

The Petitioner at no time sought a separate and independent review of the rulings of the Board or the Superior Court denying applications to reopen.

10. RHODE ISLAND APPLICATION OF RAISE OR WAIVE RULE.

Rhode Island follows a well settled "raise or waive" rule. This rule provides that issues which present themselves at trial and are not preserved by a specific objection at trial, sufficiently focused so as to call the trial justice's attention to the basis for said objection may not be considered on appeal. *In Re: Damien M.* 819 A.2d 213 (R.I. 2003), *Plourde et al. v. Myers,* 823 A.2d 1138 (R.I. 2003). The application of this Rule has been applied by the Superior Court of the State of Rhode Island with respect to administrative appeals from a state agency decision to the Rhode Island Superior Court. See the multiple-page comprehensive Superior Court rescript on this subject found in *Neuschatz v. Reitsma, as Director of RI Dept. of Environmental Management,* Superior Court of the State of Rhode Island, C.A. No. PC-02-1589, 2004 R.I. Super. LEXIS 96 (May 24, 2004).

11. RHODE ISLAND STANDARD FOR REVIEW OF ADMINISTRATIVE AGENCY DECISIONS.

In the State of Rhode Island, decisions of an administrative agency are first reviewable at the initial appellate level by the Superior Court pursuant to R.I.G.L. § 42-35-15. In the judicial review of the agency decision, the trial justice is not permitted to substitute his or her judgment for that of the state agency as to weight of the evidence on questions of fact. The decisions of the trial justice are subject to further review in the Rhode Island Supreme Court only by way of Certiorari. When the Supreme Court reviews the Superior Court justice's decision it applies the "some" or "any" test. The review is on the record and the

test is to determine if there is some or any legally competent evidence to support the Superior Court justice in his findings. See *Interstate Navigation Co. v. Div. of Public Utilities,* 824 A.2d 1282 (R.I. 2003).

When the Superior Court reviews a state agency decision pursuant to R.I.G.L. § 42-35-15, that review is limited to an examination of the certified record to determine if there is **any** legally competent evidence therein to support the agency's decision. In conducting that review, the Superior Court may not, on questions of fact, substitute its judgment for that of the agency whose action is under review. This is true even in a case in which the court might be inclined to view the evidence differently and draw inferences different from those of the agency. If there is sufficient competent evidence in the record, the court must uphold the agency's decision. See *Johnston Ambulatory Surgical Associates, Ltd. v. Nolan,* 755 A.2d 799, 805 (R.I. 2000).

The Rhode Island Supreme Court has emphasized that the review in the Superior Court must confine itself to a review of the record to determine whether any legally competent evidence exists to support the agency decision. The Superior Court cannot go outside the certified record. *Baker v. Dept. of Employment & Training Board of Review,* 637 A.2d 360 (R.I. 1994). See also *Johnston Ambulatory Surgical Associates, Ltd. v. Nolan, supra.*

12. *COX BROADCASTING CORP. ET AL. V. COHN* AS TO JURISDICTION

The Petitioner has stated in her brief at page 2:

"This Court has jurisdiction under "fourth Cox category" to review state court ruling if 1) "reversal

> of state court on Federal issue would be preclusive of any further litigation on relevant cause of action, 2) refusal immediately to review state court decision might seriously erode federal policy." Cox Broadcasting Corp Cohn 420US [sic] 469, 482-83 (1975), for application of this general jurisdiction rule."

Petitioner's argument is flawed in that the *Cox* case neither establishes criteria for determining whether or not a federal issue exists nor does it specify how it determines that a federal issue is present before a state court. The court in *Cox* essentially dealt with issues relating to finality of state court judgments.

CONCLUSION

Respondent requests that this Honorable Court deny Petitioner's request for a Writ of Certiorari. Petitioner has not met the long standing test established by this Court which would confer jurisdiction because Petitioner failed to raise the necessary federal questions to either the Rhode Island Superior Court or the Rhode Island Supreme Court. As stated above, these questions cannot be raised in the first instance at this level without demonstrating with specificity the place and manner in which it was raised by Petitioner at the state level or passed upon by the State Supreme Court in a manner that was critical to the case. In this matter, state law was sufficient to adjudicate the appellate issues presented to the Superior Court.

Petitioner has sought to introduce "evidence" and facts which would add to the certified record. This attempt was not permitted under Rhode Island law and was adjudicated appropriately at the state level where it was

entirely cognizable. This is an attempt to retry the factual predicates for the administrative decision. Petitioner, after the close of the case, sought to introduce evidence that was available to her during the administrative hearing. Moreover, Petitioner has made misstatements relating to facts, law and procedure.

For the foregoing reasons, Respondent respectfully requests that this Honorable United States Supreme Court enter an Order denying Petitioner's Petition for a Writ of Certiorari in the above-entitled cause of action.

Respectfully submitted,

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Dated: December 30, 2004

APPENDIX

STATE OF RHODE ISLAND
PROVIDENCE, SC.

DEPARTMENT OF HEALTH BOARD OF MEDICAL LICENSURE AND DISCIPLINE	: : :	
IN THE MATTER OF GERALDINE MILLS, MD	: :	NO. 98187

ADMINISTRATIVE DECISION

This matter came on for hearing before the duly designated hearing committee of the Board of Medical Licensure and Discipline (hereinafter "Board") on diverse dates between December, 1999 and March, 2001.[1] The Respondent appeared at each of the hearings and was represented by legal counsel.

TRAVEL OF THE CASE

The Director of Health issued an Order summarily suspending the Respondent's license to practice medicine on October 19, 1999. A copy of the Summary Suspension is contained in State's Exhibit #1. The Board then set a hearing date for October 29, 1999. Respondent's then

[1] The Hearing Panel consisted of three members of the Board, including Stanley J. Stutz, M.D. During the pendency of the hearing, Dr. Stutz' term on the Board expired as a matter of law. Howard Hall, M.D. was designated to replace Dr. Stutz on his hearing panel. Dr. Hall has read all of the transcripts and reviewed all of the evidence. He participated in making the findings and conclusions stated herein.

counsel requested a continuance until November 5, 1999. Subsequent counsel requested a further continuance to December, 1999. At the original hearing conducted on December 8, 1999, Respondent's counsel argued several procedural motions before the Board, all of which were denied in a written Decision and Order dated December 21, 1999. Thereafter, the matter was further continued at the request of Respondent to enable her counsel to engage in discovery. The hearing reconvened in earnest on August 23, 2000 and continued through December 2000, after which time counsel for the Respondent and the State submitted lengthy memoranda.

After the closure of evidence and submission of legal argument, the attorney who had represented the Respondent through the hearing process was fired by Respondent. Replacement counsel moved to re-open the record of the proceedings for taking additional evidence. A hearing on that motion was conducted on March 28, 2001. The Board filed a written Interim Order denying the Motion on May 1, 2001. Subsequently, on May 24, 2001 Respondent's counsel filed a second Motion to Re-open the proceedings to which the State filed an Objection. Thereafter, in advance of any decision on the Second Motion to Re-Open, Respondent, acting pro se, on June 11, 2001 filed a third Motion to Re-Open.

RULINGS ON RESPONDENT'S SECOND AND THIRD MOTIONS TO RE-OPEN

The Board has considered Respondent's Second and Third Motions to Re-Open proceedings. For the reasons elucidated in the Board's Interim Order denying Respondent's original Motion to Re-Open Proceedings, the Board

hereby denies both motions without the necessity of further argument by the parties.

FINDINGS OF FACT

Via Count One of the Amended Specification of Charges, the Respondent is alleged to have been guilty of unprofessional conduct in the practice of medicine by virtue of having filed an application for staff privileges with Rhode Island Hospital, which application contained false, erroneous and misleading information concerning Respondent's credentials.

In support of this allegation, the State presented testimony from the Respondent as well as information obtained from the Rhode Island Hospital Staff Credentials Committee. The report of the RIH Credentials Committee noted several discrepancies in the information provided to it by Respondent (State's Exhibit 12). Among other things the report notes that the Respondent had indicated on her application for staff privileges (State's Exhibit 10) that she had been enrolled at Case Western University in a "Ph.D./MD" program. Under questioning by the Credentials Committee, Respondent admitted that she had only attended "medical school" classes as part of her graduate pathology program, but that at no time was she enrolled in Case Western's Medical School nor matriculating toward a medical degree. Next, the Credentials Committee took issue with Respondent's repetitious claims of having been "admitted" to both the Yale and Brown medical residency programs. As evidence of her acceptances at Yale and Brown, she provided the Committee with letters addressed to her from The Memorial Hospital in Pawtucket, RI and the Hospital of St. Raphael in New Haven, CT. Both of

these letters (State's 8 and 9) denote that the facilities had planned to rank her in their "matching" of residents with their residency programs. Upon further investigation by the Credentials Committee, it was learned that Respondent had never been "admitted" to either program and had not been at Brown or Yale at all. Respondent's application also referenced her internships at St. Thomas Hospital and Winthrop University Hospital. She advised the Credentials Committee that she had voluntarily left each of those hospitals after serving only one (1) year of a two (2) year internship. In fact, the Respondent was not offered a second year in either program. The record of Respondent's application proceedings (State's Exhibit #12) and her hearing before the Credentials Committee at Rhode Island Hospital (State's Exhibit #13) point out the inaccuracies contained in the materials Respondent forwarded and the statements she made to the Committee. Respondent's attempts to explain her misstatements before the Committee, and on the record of the within hearing, are at best convoluted and inconsistent. It is clear that Respondent provided false information to the Rhode Island Hospital Credentials Committee in an effort to gain staff privileges at the hospital. It is further clear that the Rhode Island Hospital Credentials Committee denied Respondent's application for staff privileges, whereas Respondent has steadfastly maintained on the record of this proceeding that she withdrew her application for staff privileges.

Count two of the amended specification of charges alleges that the Respondent was guilty of unprofessional conduct in that she was incompetent and negligent in the practice of medicine. Further, it is alleged that she was guilty of willful misconduct in the practice of medicine, all in connection with the treatment of four female patients.

In support of its charge, the State alleges that Respondent refused to conduct her clinical practice in an office setting and advised the patients and their parents that the offices were contaminated, as were their patient records. The Respondent delivered clinical care to the patients in the yard of her office building on Warwick Avenue in Warwick, RI and, alternatively, at the homes of the patients. The Respondent testified at great length about this charge. She related to the Board that pollutants and contaminants in the various buildings where she maintained her offices had caused her to move her office location four (4) times from 1994 to 1999. She testified that her first office was located at 65 Jefferson Boulevard. She had to move from that building because it had been contaminated by carpeting and glue used in it. She re-located to 770 Reservoir Avenue in 1996, taking all of her office/medical equipment with her. She advised the Board that all of her equipment and her patient records had been contaminated at the Jefferson Boulevard address, and that they in turn contaminated the Reservoir Avenue office. The Respondent next moved to 107 Warwick Avenue in 1998. She testified that premise was contaminated by an underground oil spill which had occurred prior to her purchase of the building. She could not stay there either, so she purchased a house which included her office at 1025 Warwick Avenue in 1998 or 1999. After a short time at that location, she determined that building was also contaminated as a result of its prior use as a hairdressing salon. She refused to enter the building after determining that it was toxic. It is from that location that the Respondent admits to having treated the children in her yard and in a vehicle parked outside the building.

The Respondent claims to have contacted the Department of Health (DOH), Poison Control, the Department of Environmental Management (DEM), and the Environmental Protection Agency (EPA) to investigate the various buildings. She told the Board that both DEM and the EPA had confirmed the existence of contaminants. In the case of one of the buildings, the Respondent testified that DEM advised her the dental office on the floor above her office was dripping radiological material through the ceiling onto her floor, and that she should not utilize the floor beneath the dentist's office. She also testified that she had all of her patient records tested by 3M Company for toxicity, and that all of the records were found to be contaminated.

The Board asked Respondent to produce copies of the DEM, DOH, Poison Control, EPA and 3M records. None were forth coming. Nor were any witnesses called to substantiate Respondent's statements. Respondent's testimony with respect to the alleged findings by the aforementioned agencies was not credible. Respondent admitted in her testimony that she began seeing patients outside the office. In one case, she had the patient meet her at the St. Joseph Hospital Emergency Room and examined her there. In another case, she directed the patient to meet her in the St. Joseph Hospital parking lot, and she examined and treated that child in the parent's vehicle while it was parked in the hospital parking lot. Respondent informed the Board that she no longer has staff privileges at St. Joseph Hospital.

Respondent admitted to the Board that on or about July 30, 1999, she saw two adolescent patients, Patient A and Patient B, and their mother at Respondent's office. Respondent advised them they could not go into the

building because it was contaminated. She advised them that she suspected pesticide poisoning or contamination from fire extinguishers. She stated that fire personnel had tested the extinguishers and had found nothing wrong with them. Respondent testified that she told the mother and her patients that it was necessary for her to treat the children in her yard, as she could not go in the building. She advised them that she had been hospitalized with blurred vision, nausea and an inability to swallow. In the record of this proceeding, the Respondent admitted she was never hospitalized, nor did she present any medical record or report to substantiate any treatment she may have received due to her "poisoning".

The Respondent advised the Board that she did not contact any regulatory agency with respect to conditions at the house/office at 1025 Warwick Avenue inasmuch as she had solicited the assistance of several agencies concerning the other buildings and none of them did anything. She testified that she told her patients that she had made complaints about the building to Blue Cross/Blue Shield, but that no one there cared that there were "deadly smells" in the office. On the occasion of the July 30th lawn visit, the Respondent refused to enter the building on Warwick Avenue. She sent patients A and B inside to see her assistant for vital signs, weight and, in the case of one, a urine sample. She then met the patients in the yard for examination in her assistant's van. The Respondent conducted blood tests in the yard. One of the patients was a teenager. While out in the yard, the Respondent, as part and parcel of her examination, within earshot of the mother and the other sibling, conducted an oral interview into the patient's use of cigarettes and alcohol, feelings of depression, sexual activity and suicide ideation. While she

was doing this, jets were flying overhead in and out of T.F. Green Airport. The Respondent commented to the parent and her patients that they were "dropping jet fuel" on her. The patient's mother testified in the hearing before the Board that this comment was made in all seriousness and that the Respondent seemed genuinely frightened of the jet fuel. Respondent advised the parent on that date that she was never going to enter the office building again, that she had made up her mind. She said she would begin making housecalls as a routine and she told them she was going to set up a tent in the yard to facilitate her treatment of patients. Following this incident, the parents of A and B, who had two other children under Respondent's care, sought medical assistance for their children elsewhere and made a complaint to the Department of Health concerning Respondent's activities. The mother of patients A and B explained that on July 30, 1999 the Respondent was acting and speaking to her and the children in a bizarre fashion. She did not want to escalate the problem, so she saw the visit through. On that date, Respondent told the parent that Blue Cross/Blue Shield and the Department of Health were involved in a conspiracy against her. The mother reported this strange behavior to the Department of Health.

The Respondent testified before the Board that in August of 1999 she administered +/-50 chicken pox vaccine shots to children in the back yard of 1025 Warwick Avenue. She stated that her assistant would hand the vaccine out the window to her, and that she vaccinated the children in the yard. She informed the Board that "It's very private back there."

Both of Patient A and B's parents testified as to harassment they endured following the making of their

complaint to the Board. The parents testified to receiving "hang-up calls", many of them, immediately after their contact with the Department. On one occasion, the Respondent called the parent husband in the middle of the night. She was angry at them for reporting her activities to the Department. She because [sic] hysterical in the conversation, screaming at the parent. He testified that he told the Respondent that it was opinion [sic] that she needed medical help and they (the parents) were trying to see that she got it.

The parent is a case worker at the Department of Children, Youth & Families (DCYF) where he investigates complaints of child abuse. He testified that his supervisor received an anonymous complaint regarding child abuse alleged to be existing in their home. The complainant alleged that child abuse had been going on over a period of many years from when the children were infants into their teens. The parent was thoroughly investigated as a result of the complaint, and all charges proved unfounded. However, the parent did suffer the indignity of being investigated for the very thing he seeks to prevent.

In her examination, the Respondent admitted that it was she who had anonymously reported the parents to DCYF. She did not seem to know that DCYF keeps recordings of anonymous calls. The tape of her call to DCYF was played at the hearing, from which the Respondent's voice was easily recognizable. The Respondent did not make the call to DCYF until after she was notified that the parents had filed a complaint with the Department of Health. She claimed in her testimony before the Board that she only began to suspect child abuse when she reviewed the children's medical records in conjunction with responding to the complaint leveled against her. In

describing her suspicions of abuse, she relied on the children's earlier medical records which she had obtained from former treating physicians. In coming to her conclusion that the children were victims of abuse, Respondent was particularly adamant about the fact that the parents had failed to inform her that one of the children had a "near SIDS" episode as an infant. That child, when Respondent began treating the children, was an adolescent, and at the time of the complaint, had reached her late teens.

The Respondent's inordinate attention to the child's experiences as an infant, given that the child had now become a young adult, are inexplicable. In her testimony before the Board, it is fair to say that the Respondent seemed obsessed with the "near SIDS" incident and the family's characterization of it as an "Acute Life Threatening Event" (ALTE) and/or "apnea". The Respondent disagreed vehemently with the expert presented by the State who indicated that the terms "near SIDS" and "ALTE" were synonymous. The expert also testified that nothing contained in the charts of these children would cause him to suspect child abuse.

The State's attorney then inquired of Respondent whether she was aware of the statutory reporting requirements for physicians suspecting child abuse. The Respondent knew that she was required to identify herself to authorities and file a written report. She testified that she made the anonymous call and did not follow-up with anything written because she was under the "Summary Suspension" order and was not acting as a doctor at the time.

It is clear that Respondent is guilty of Counts Two, Three and Four of the Amended Specification of Charges.

Count Six relates to yet another family with children who were treated by Respondent. In the case of one of the children, Respondent told the parents that she suspected the child to be suffering from "Williams Syndrome" which is characterized by dwarfish or elfin features and a "failure to thrive". Subsequent evaluation by another physician revealed nothing wrong with the child. The parents in this family determined to seek a relationship with another pediatrician for their children. Their testimony, supported by the Respondent's acknowledgement of same, was that Respondent advised the parents that their children's records could not be transferred until all fees were paid for services rendered. The family had not received any bills prior to their request for records, and they had health insurance coverage for the children. Copies of Respondent's billings to the family were introduced into evidence. The services rendered and amounts due as shown on the "bills" were incomprehensible to the Board. The physician member of the Board made extensive inquiry of Respondent on the record in an effort to obtain some understanding of Respondent's billing practices. The Board concluded that the so-called billings were unintelligible to practitioners, let alone patients and their families. Respondent did not turn over the patients' records to the family until the Department of Health intervened upon receipt of the parents' complaint in 1998.

Count Five alleges that Respondent has been guilty of unprofessional conduct and/or misconduct by reason of impairment which has adversely affected the ability of Respondent to conduct her practice in a professional manner.

Pursuant to Section 5-37-5.2(e)(2), the Investigating Committee of the Board may exercise the authority afforded by Section 5-37-1.3(10) to assist the Board if, in the opinion of the Investigating Committee, a licensee is suffering from an impairment.

Following the receipt of the aforementioned complaint in 1998, the Director of Health appointed an Investigating Committee of the Board to review Respondent's status. The Investigating Committee reviewed the pertinent materials and interviewed Respondent and potential witnesses. The Investigating Committee determined that there was reason to believe that the Respondent was suffering from an impairment, as a result of which she was unable to conduct her practice professionally. In accordance with Section 5-37-1.3(10), the Committee directed that Respondent submit to a psychiatric examination. Over the course of approximately one year between September 1998 and September 1999, the Respondent initially agreed with, then disputed, the necessity for an examination. In the meantime, the Board had received the second complaint. Following the Board's investigation of that complaint, the Board received the information relative to Respondent's filing of the false report with DCYF against the second complainants. As a result of Respondent's refusal to undergo an evaluation, and the Director's determination that her continuation in practice posed a substantial risk to patients, the Director issued the Summary Suspension on October 13, 1999. In her testimony on the record, the Respondent alternately stated that she did not care for the psychiatrist chosen for the evaluation by the State, that she had chosen her own psychiatrist who didn't complete the evaluation and with whom she could not get along and/or that she had been evaluated and was

presently treating with a psychiatrist. No medical records were furnished to support that Respondent had ever submitted to the evaluation as requested by the Investigating Committee. The Board must conclude that the Respondent has failed to comply with the directive of the Investigating Committee that she submit to a psychiatric evaluation in order to determine her competency to practice medicine.

CONCLUSION

Count Seven goes to the totality of the conduct and behavior alleged in prior counts. The cumulative weight afforded to all of the charges leads to the inescapable conclusion that Respondent is unfit to practice medicine in a professional manner at this time. The Board has the statutory authority to mandate that Respondent submit to physical and/or psychiatric examination as a condition to her continuation in the practice.

ORDER

1. That after hearing on the merits, Respondent's license to practice medicine is hereby suspended indefinitely.

2. That Respondent is ordered to submit to physical and psychiatric examinations to be conducted by medical professionals who are pre-approved by the Board.

3. That upon completion of the aforesaid examinations, the Respondent may apply for reinstatement other medical license provided the medical reports indicate that she is fit for practice and is in compliance with any treatment regimen proposed by her physicians. Whether Respondent's license is reinstated shall be left to the sound

discretion of the Board. Based upon the evidence presented, the Board may deny reinstatement or permit reinstatement upon such terms and conditions as are deemed necessary by the Board at that time.

Entered this 10th day of July, 2001.

BOARD OF MEDICAL LICENSURE AND DISCIPLINE

SALLY JANE THIBODEAU, Ph.D. MEMBER
MEREDITH COSTA MEMBER
HOWARD HALL, M.D. PHYSICIAN MEMBER

/s/ Sally Jane Thibodeau, Ph.D.
For the Hearing Committee

Assented to as to content and form.

/s/ Patricia a. Nolan, MD, MPH
PATRICIA A.NOLAN, MD, MPH
DIRECTOR OF HEALTH

CERTIFICATION

I hereby certify that I have mailed a copy of the within ADMINISTRATIVE DECISION to Damon D'Ambrosio, Esquire, 663 Admiral Street, Providence, RI 02908 and a copy was also mailed to Geraldine Mills, M.D., 191 Squantum Drive, Warwick, RI 02888 on this 11th day of July, 2001.

/s/ Carole Allsworth

GERALDINE MILLS, M.D. VS.
PATRICIA A. NOLAN, M.D., M.P.H., DIRECTOR,
DEPARTMENT OF HEALTH

PC NO. 01-4153

SUPERIOR COURT OF
RHODE ISLAND, PROVIDENCE

2003 R.I. Super. LEXIS 146

November 13, 2003, Filed

JUDGES: PROCACCINI, J.

OPINION BY: PROCACCINI

OPINION: DECISION

PROCACCINI, J. Before this Court is an administrative appeal from a July 10, 2001, decision by the Rhode Island Department of Health, suspending Geraldine Mills's (referred to in this decision as "Appellant" or "Dr. Mills") license to practice medicine for an indefinite period of time. The Appellant seeks reversal of the Board of Medical Licensure and Discipline's decision suspending her license. Jurisdiction is pursuant to R.I. Gen. Laws 1956 § 42-35-15.

I. Case Travel and Facts

On October 19, 1999, the Director of Health issued an Order summarily suspending Dr. Mills's license to practice medicine in Rhode Island. The Board of Medical Licensure and Discipline set a hearing date for October 29, 1999, which, upon Dr. Mills's counsel's request, was continued until November 5, 1999. Subsequent counsel for Dr. Mills requested a further continuance until December of 1999. On December 1, 1999, Dr. Mills received the Board's

Amended Specification of Charges charging Dr. Mills with seven counts of unprofessional conduct, in violation of R.I. Gen. Laws § 5-37-5.1.

After receiving the Amended Specification of Charges, Dr. Mills's counsel proceeded to file several procedural motions, which were heard at the original hearing on December 8, 1999. On December 21, 1999, the Board issued a written Decision and Order denying all of Dr. Mills's motions. On this same date, the Board granted Dr. Mills's request for a continuance to enable her counsel to engage in discovery.

Hearings on this matter reconvened on August 23, 2000 and continued through December 7, 2000. The dates of the hearings were as follows: August 23, 2000; September 21, 2000; October 5, 2000; October 19, 2000; and December 7, 2000. During the hearings, the Board received 28 exhibits, and heard testimony from six witnesses: the mother and father of female Patients A, B, C, and D; the mother and father of female Patients E and F; Dr. Eden, an expert in the field of pediatrics; and Dr. Mills. Dr. Mills did not present any witnesses to testify on her behalf.

On July 10, 2001, the hearing panel rendered its decision to suspend Dr. Mills's license indefinitely. The Board's decision provided that Dr. Mills can apply for reinstatement after she has undergone a physical and psychiatric examination by medical professionals pre-approved by the Board, and the reports from this examination indicate that she is fit for practice. On July 11, 2001, the Director of Health approved the Board's decision. Dr. Mills filed an administrative appeal of that decision on August 9, 2001, pursuant to R.I. Gen. Laws § 5-37-7. The appeal of that decision is now before this Court.

The facts of this case are organized in terms of the counts Appellant was charged with during the proceedings. On August 23, 2000, the Board heard testimony from the Appellant. On September 21, 2000, the Board heard testimony from the parents of Patients A, B, C, and D, and the Appellant. On October 5, 2000, the Board heard testimony from the parents of Patients E and F. On October 19, 2000, the Board heard testimony from the Appellant and Dr. Eden. On December 7, 2000, the last day of the hearings, the Board heard extensive testimony from the Appellant on direct examination. The pertinent testimony of each of the aforementioned witnesses is recounted in relation to the respective counts contained in the Amended Specification of Charges.

Count One

Count One charged Dr. Mills with unprofessional conduct, in violation of R.I. Gen. Laws §§ § 5-37-5.1, 5-37-5.1(8) and 5-37-5.1(19), for submitting an application to the Rhode Island Hospital Credentials Committee in 1993 that contained false, erroneous, and misleading information regarding her credentials. The Board reviewed five exhibits relating to this charge, including the following: the report of the Rhode Island Hospital Credentials Committee regarding information provided to it by Dr. Mills (State's Exhibit 12); Dr. Mills's application for staff privileges to said hospital (State's Exhibit 10); letters of admission to both the Yale University (Yale) and Brown University (Brown) residency programs, provided by Dr. Mills in support of her application (State's Exhibits 8 and 9); and the record of Dr. Mills's hearing before the Rhode Island Hospital Credentials Committee (Exhibit 13).

Additionally, the Board heard testimony from Dr. Mills relating to this charge.

Upon review of the aforementioned exhibits, the Board concluded that there were several discrepancies between the information Dr. Mills provided on her application for staff privileges to Rhode Island Hospital and her actual credentials. These inaccuracies were particularly apparent during Dr. Mills's hearing before the Credentials Committee. During the hearing, it was revealed that many of the credentials listed by Dr. Mills on her application were broad overstatements. Dr. Mills's application indicated that she was enrolled in a "Ph.D./MD" program at Case Western University, that she had been admitted to both the Yale and Brown medical residency programs, and that she voluntarily left her internships at St. Thomas Hospital and Winthrop University Hospital. Upon questioning by the Committee, Dr. Mills admitted that she had only attended medical school classes at Case Western University as part of her graduate pathology program and was never actually enrolled in their medical school. Upon further investigation by the Committee, it was also revealed that Dr. Mills was never actually admitted to the Yale and Brown residency programs, and that she was not offered a second year to continue her internships at St. Thomas Hospital and Winthrop University Hospital. The Board concluded that Dr. Mills's efforts during the hearings to clarify these discrepancies were "at best convoluted and inconsistent." (Administrative Board Decision at 4.) Furthermore, the Board found Dr. Mills's steadfast assertion of having voluntarily withdrawn her application from the Rhode Island Hospital Credentials Committee to be disturbing, when it was clear that the hospital denied her

application for staff privileges. (Administrative Board Decision at 4.)

Count Two

Count Two charged Dr. Mills with unprofessional conduct, in violation of R.I. Gen. Laws §§ § 5-37-5.1, 5-37-5.1(18), and 5-37-5.1(19), for her incompetent and negligent treatment of female Patients A, B, C, and D, her inappropriate communications with the parents of said patients, and her willful misconduct in the practice of medicine relating to this family. In relation to this charge, the Board heard testimony from the parents of Patients A, B, C, and D, Dr. Eden, an expert in the field of pediatrics, retained by the Board, and the Appellant herself. At the time proceedings began Patient A was 19 years of age, Patient B was 17 years of age, Patient C was 15 years of age, and Patient D was 5 years of age.

The mother of Patients A, B, C, and D (herein referred to as Witness One) testified that she began taking her daughters to see Dr. Mills, when her youngest daughter was born. (Tr. of September 21, 2000 at 5.) Witness One testified that during the time she was using Dr. Mills as the family pediatrician, Dr. Mills moved her office to four different locations. (Tr. of September 21, 2000 at 5-7.) Witness One further testified that at the third office location on Warwick Avenue, Dr. Mills treated Patients B and D outdoors. When Witness One arrived with Patients B and D for their scheduled appointments to get physicals, Dr. Mills was standing in the driveway and informed them that the office was contaminated. Witness One testified that Dr. Mills conducted the initial examination of Patients B and D on the front lawn towards the street and

then requested that Witness One take Patient D inside for a urine sample. When Witness One returned with Patient D, the remainder of the physical was conducted on the front lawn. Witness One further stated that during this same visit, Dr. Mills asked Patient B whether she was sexually active, leaving Patient B mortified. According to Witness One, Dr. Mills proceeded to take blood samples from Patient B in her medical assistant's van, before deciding that it was too hot in the van, at which time Dr. Mills decided to take Patient D's blood outside on the grass. Witness One further testified that during this same visit, Dr. Mills pointed to an airplane flying over them and made a comment to the effect that the plane was dropping jet fuel.

Relating to this same charge, the father of Patients A, B, C and D, herein referred to as Witness Two, testified about his encounters with Dr. Mills. Witness Two stated that he personally brought his daughters to see Dr. Mills on approximately four occasions and was concerned by the frequency with which Dr. Mills was switching office locations. According to Witness Two, his concern regarding Dr. Mills's treatment of his daughters was heightened when he learned that Dr. Mills treated Patients B and D outdoors at the Warwick Office. (Tr. of September 21, 2000 at 61-63.)

Also providing testimony relating to this charge was Dr. Eden,[1] who stated that in the standard practice of

[1] Dr. Eden has been practicing pediatrics since 1988 and at the time of the proceedings had been licensed in Rhode Island for six years. He attended Boston University School of Medicine, and upon graduation came to Rhode Island as a pediatric resident and spent three years at the Rhode Island Hospital, Brown University Program. Upon

(Continued on following page)

medicine it would not be acceptable to practice medicine outdoors, noting that privacy and security are factors to be taken into consideration. (Tr. of October 19, 2000 at 35.) Dr. Eden explained that assuming there was a problem in a pediatrician's office building preventing its use, standard practice would require that the physician secure a private environment to protect the sanctity of the doctor/patient relationship. (Tr. of October 19, 2000 at 35.) According to Dr. Eden, barring a medical emergency, it would be more appropriate to cancel an examination than to conduct an examination outdoors. Dr. Eden clarified that in standard practice, a camp or school physical does not constitute a medical emergency. Additionally, Dr. Eden was firm in his testimony that conducting an examination in a car outside the physician's office stretched the bounds of propriety, barring an absolute medical emergency. Dr. Eden explained that such significant deviations from standard practice in the performance of medical examinations demonstrate inappropriate judgment, a sufficient reason for a pediatrician's disqualification. (Tr. of October 19, 2000 at 65.)

In response to these allegations, Dr. Mills testified about her treatment of Patients A, B, C, and D. Dr. Mills's testimony during the proceedings substantiates that she conducted an examination of Patients B and D outdoors because she believed her office to be contaminated. Dr. Mills did not dispute any of the facts relayed by Witness One regarding the outdoor examination of Patients B and

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completion of his pediatric residency training, Dr. Eden worked in Brockton Hospital for two years as a pediatrician. Since 1994, Dr. Eden has worked as the founding member of Children's Medical Group, a pediatric practice on the campus of Rhode Island Hospital.

D. Furthermore, Dr. Mills admitted that she sent Patient D inside the office for a urine sample when she herself would not enter the office because she believed the office contained deadly toxins. In totality, Dr. Mills's testimony relating to this charge revealed that all of the information relayed by the parents of Patients A, B, C, and D with respect to these patients' medical care were accurate.

Count Three

Count Three charged Dr. Mills with unprofessional conduct, in violation of R.I. Gen. Laws §§ § 5-37-5.1, 5-37-5.1(18), and 5-37-5.1(19), for failing to maintain complete and accurate records for Patients A, B, C, and D, and for reporting false, misleading, and irrelevant information on said records. Witness One and Witness Two, as well as the Appellant, provided testimony in relation to this charge.

During the hearings, Witness One testified that all of her daughters' previous medical records from other doctors and hospitals were provided to Dr. Mills when they took her on as the family pediatrician. (Tr. of September 21, 2000 at 25.) She testified that the records were complete when they were provided to Dr. Mills and a yellow shot card was now missing from the records. (Tr. of September 21, 2000 at 26.) Witness One also explained that Patient A's apnea records, which were transported to Dr. Mills, were now missing. (Tr. of September 21, 2000 at 27.) Also testifying in relation to this charge, Witness Two stated that Patient A's chart includes an inaccurate notation that reads that he was too busy to take Patient A for an MRI after she was injured on a roller coaster. According to Witness Two, he never made any such comment to the Appellant. (Tr. of September 21, 2000 at 72.)

The Board also heard testimony from the Appellant in relation to this charge. During her testimony, Dr. Mills admitted to placing information in the aforementioned patients' records that did not directly concern their medical treatment. Dr. Mills testified that she included, in these patients' summary sheets, Witness One's statements that she did not smell toxins in the Appellant's office building. At the same time, the Appellant conceded that these summary sheets are intended to be devoted to the most important information regarding the patient's medical history.

Count Four

Count Four charged Dr. Mills with unprofessional conduct, in violation of R.I. Gen. Laws §§ §§ 5-37-5.1, 5-37-5.1(8), 5-37-5.1(18), and 5-37-5.1(19), for anonymously making an unfounded telephone complaint to the Department of Children, Youth and Their Families (DCYF) suggesting child abuse by the parents of Patients A, B, C, and D. The Board further maintained that this complaint was made as a retaliatory measure, because the parents had filed a complaint against Dr. Mills with the Department of Health. The Board heard testimony from the mother and father of Patients A, B, C, and D, Dr. Eden, and the Appellant, relating to this charge.

The mother of Patients A, B, C, and D testified that she contacted the Department of Health concerning the Appellant, after receiving a phone call in which the Appellant seemed suicidal. (Tr. of September 21, 2000 at 12.) During this conversation, the Appellant told Witness One that everyone, but namely the Department of Health and Blue Cross, were all out to get her. Witness One stated that after she sent a letter to the Department of Health regarding the Appellant's behavior, the Appellant began calling

her family at their home, demanding to speak with either her or her husband. On one occasion, the Appellant called back at midnight to speak with Witness One's husband and during that conversation asked why they were doing this to her. (Tr. of September 21, 2000 at 15.) According to Witness One, subsequent to this conversation, the family received repeated telephone calls and hang ups, one of which Patient B directly traced back to Appellant by dialing star 69. (Tr. of September 21, 2000 at 15-17.)

Witness Two's testimony outlined the full extent of retaliatory measures taken by Dr. Mills. Witness Two, who is employed as a case worker for DCYF, testified that Dr. Mills filed a complaint against him with DCYF claiming that she suspected abuse. According to Witness Two, he was called into his supervisor's office and was informed that an anonymous call had been made to the Child Abuse Hot Line in regard to suspicious injuries on Patients A and B. He further testified that the only person he could fathom making such a complaint was Dr. Mills. He explained to his supervisor that he had filed a complaint against Dr. Mills and suspected that it was she who made the call. On account of this information, Witness Two explained that DCYF conducted a non-investigation, downgraded to an early warning. (Tr. of September 21, 2000 at 64.) Witness Two testified, however, that though a non-investigation was considered more appropriate given the unusual circumstances, both the supervisor and the chief investigator were involved and asked Witness Two questions regarding potential abuse. (Tr. of September 21, 2000 at 66.)

In relation to this charge, Dr. Eden testified that there was nothing in the medical history of Patients A and B that would have led him to suspect child abuse. According to

Dr. Eden, a physician who is referred a medical chart from another physician has a duty to review that chart and consult the previous physician if he has any concerns about the care and treatment of that patient. (Tr. of October 19, 2000 at 29.) In cases where a pediatrician might suspect child abuse, Dr. Eden explained that the pediatrician would have a duty to consult the patient's record thoroughly and contact past treating physicians and past treating hospitals before contacting the appropriate agency. (Tr. of October 19, 2000 at 30-31.) Dr. Eden further clarified that the information provided in the records that Witness One brought to Dr. Mills regarding Patient A's past medical history would have given a pediatrician sufficient notice that the child had a near Sudden Infant Death Syndrome (SIDS) event in her life. (Tr. of October 19, 2000 at 34.) Furthermore, Dr. Eden explained that if a pediatrician does suspect child abuse, neglect or sexual abuse, the pediatrician is required to report that suspicion to DCYF or the appropriate agency and then follow that up with a written physician's record of examination. (Tr. of October 19, 2000 at 40.) Dr. Eden testified that it is not in accordance with the appropriate standard of care for a physician to call an anonymous hotline regarding suspicions of child abuse. (Tr. of October 19, 2000 at 41.)

During Dr. Mills's testimony on this issue, Dr. Mills conceded that she called the Child Abuse Hot Line regarding Witness Two, who she was aware worked for DCYF. (Tr. of August 23, 2000 at 74.) Dr. Mills stated that she made this phone call on October 5, 1999, only after she had learned that Witness One and Witness Two had filed a complaint against her with the Department of Health. (Tr. of August 23, 2000 at 75.) Dr. Mills further admitted that

the patient she was calling the Hot Line in regard to was 19 years of age at the time and had already started college. (Tr. of August 23, 2000 at 76.) Dr. Mills explained that the possibility of abuse came to her attention when she was carefully reviewing the records of Patients A, B, C, and D so she could respond to the claim that Witness One and Witness Two had filed against her. (Tr. of August 23, 2000 at 75.) According to Dr. Mills, she was particularly disturbed that Witness One had never mentioned that Patient A was a near SIDS baby; yet, had mentioned that Patient A had apnea. (Tr. of August 23, 2000 at 75.) Dr. Mills explained that this was worrisome because SIDS is more commonly known than apnea. (Tr. of August 23, 2000 at 75.) Furthermore, Dr. Mills claimed that when she thoroughly looked through the medical records of Patient A, provided by Witness One, she noticed numerous injuries from haphazard incidents which led her to believe that there was abuse occurring. (Tr. of October 19, 2000 at 20.) Dr. Mills later testified that she made the complaint to DCYF because she was concerned about Patients A, B, C, and D after seeing a Dateline show in which a girl was murdered by her father. (Tr. of December 7, 2000 at 57.) According to Dr. Mills, she feared that if she identified herself when making the report, she would be suspended. (Tr. of December 7, 2000 at 66.)

Count Five

Count Five charged Dr. Mills with unprofessional conduct in violation of R.I. Gen. Laws §§ § 5-37-5.1, 5-37-5.1(18), and 5-37-5.1(19), by reason of professional incompetency, in committing acts of misconduct due to an impairment that has directly affected her ability to practice professionally. As this charge is more general in nature, all of the

testimony throughout the proceedings is relevant. During the hearings, both Witness One and Witness Two expressed concern for the Appellant and explained to the Board that their reason for filing a complaint with the Department of Health was that they were worried that the Appellant might harm herself. Both sets of parents who testified during the proceedings, explained that they had filed complaints against the Appellant with the Department of Health after making the decision to switch to new pediatricians. Furthermore, during the proceedings, Dr. Eden testified that in his expert opinion, he did not believe that the Appellant was fit to practice medicine at the current time.

In addition to the testimony of the State's witnesses, a large basis for the Board's determination relating to this charge stems from the Appellant's own testimony during the proceedings. During her testimony, Dr. Mills admitted that she moved four times during her time in private practice, which lasted from 1994 until 1999. She explained that the reason for each of these moves was contamination in the buildings where her various offices were located. (Tr. of December 7, 2000 at 9-19.) According to Dr. Mills, her first office, located on Jefferson Boulevard, was contaminated by the carpeting and glue used in the office. Dr. Mills went on to explain that although her second office building, located at Reservoir Avenue, was not initially contaminated, it became contaminated after she moved her things over from the first building to the second building. Moreover, she testified that along with her furniture, medical equipment, papers and books, her patients' charts became contaminated. Though Dr. Mills claimed that such contamination could be verified through tests conducted by 3-M Corporation, Dr. Mills never

provided the results of such tests during the proceedings, even after being asked to do so. Dr. Mills further testified that she was never informed by DEM or the real estate agent that there had been a gasoline spill under the third office building. Finally, Dr. Mills attributed the contamination in the fourth building to toxic levels of formaldehyde. (Tr. of December 7, 2000 at 29-30.)

In explaining how she confronted these situations, Dr. Mills testified that she informed most of her patients about the contaminants in the various office buildings, and as soon as she became aware that there were toxins in a building, she would begin doing house calls. (Tr. of December 7, 2000 at 38.) Dr. Mills further explained that on one occasion, she examined a patient in the parking lot of St. Joseph's Hospital after St. Joseph's Hospital refused to allow her to examine the patient in the Emergency Room of the hospital. During the proceedings, Dr. Mills also felt it was important to clarify that this examination took place in the back of the patient's car. (Tr. of December 7, 2000 at 39-40.) Dr. Mills further admitted that due to the toxins in her offices, she began to conduct some of her examinations outdoors and confirmed that she gave her patients the chicken pox vaccine outdoors in the back of her office building, where according to Dr. Mills, it was private. (Tr. of December 7, 2000 at 54-55.) Dr. Mills did not dispute the fact that she allowed her medical assistant and young patients to go in and out of her office, when she herself would not enter the office building because she believed it contained deadly toxins. (Tr. of December 7, 2000 at 44-45.) Dr. Mills explained that she would wait outside while her patients went inside the office attended by Dr. Mills's medical assistant, so the patients could be

weighed, measured, and have their temperatures and vital signs taken. (Tr. of December 7, 2000 at 45-46.)

With respect to submitting to a psychiatric examination, as required by the Investigating Committee, the Appellant testified that she did not care for the psychiatrist chosen by the State and decided to choose her own psychiatrist to conduct an evaluation. The Appellant proceeded to explain that the psychiatrist she had chosen did not complete the evaluation because they could not get along.

Count Six

Count Six charged Dr. Mills with unprofessional conduct, in violation of R.I. Gen. Laws §§ § 5-37-5.1, 5-37-5.1(19), 5-37-5.1(24), and 5-37-22 and the Rules and Regulations of the Board of Licensure and Discipline regarding medical records § 11.2, for her incompetent and negligent care of Patients E and F. In relation to this charge, the Board heard testimony from the parents of Patients E and F, Dr. Eden, and Dr. Mills.

The mother of Patients E and F (herein referred to as Witness Three) testified that she first became concerned about Dr. Mills's conduct when she noticed Dr. Mills's aggressive behavior toward Patient E. Witness Three explained that Dr. Mills became irritated when Patient E exhibited agitation about receiving injections and that Dr. Mills would request that Witness Three hold her daughter down. Additionally, Witness Three testified that Dr. Mills used an aggressive tone with Patient E. Witness Three also testified as to how uncomfortable it was for her to bring Patient E for shots due to the tense environment it created and explained that she has not incurred similar

problems since she switched pediatricians. (Tr. of October 5, 2000 at 6-7.)

Regarding the care of Patient F, Witness Three testified that Dr. Mills informed her that Patient F was not growing at the standard rate and made statements to the effect that Patient F could potentially turn out to be a dwarf. Witness Three testified that Dr. Mills showed her pictures of dwarfs and commented that dwarfs have a life span of approximately 20 years. According to Witness Three, Dr. Mills went through a thorough explanation of dwarfism, showed Witness Three a medical book stating the symptoms and signs of the disease, and went on to tell Witness Three that Patient F exhibited dwarf like features, and may be suffering from a condition known as Williams Syndrome. Dr. Mills also used the descriptive terms, "elf" and "midget," in referring to this patient. Although there was some confusion during the proceedings as to which of these words was used at which time, the record reveals that Dr. Mills used these terms in reference to Patient F. Based on Dr. Mills's findings, Witness Three testified that Dr. Mills ordered related tests, consisting of a heart exam and x-rays. Witness Three further testified that when she brought Patient F for the heart exam, that doctor told Witness Three that there was no need for such extensive tests. Witness Three further explained that despite these findings, Dr. Mills wanted to conduct additional tests because of Patient F's small size. The results of all tests done on Patient F proved negative. (Tr. of October 5, 2000 at 30.)

In addition to finding the above stated treatment of Patients E and F to be inferior, Witness Three's testimony also revealed that she was taken aback by Dr. Mills's lack of attentiveness in ensuring that she was able to care for

Patients E and F on a regular basis. According to Witness Three, between 50 to 60 percent of the time Patients E and F needed to see Dr. Mills on an emergency basis, they were transferred to another doctor. (Tr. of October 5, 2000 at 14.) Witness Three further stated that she was given a beeper number to use for emergencies which she was afraid to use because Dr. Mills appeared very irritated when she was called on her beeper. (Tr. of October 5, 2000 at 27.)

As a result of the difficulties which they were experiencing in using Dr. Mills as the family pediatrician, Witness Three testified that she and her husband decided that it would be best if they chose a new pediatrician. Upon making this decision, Witness Three stated that they informed Dr. Mills that they would need her to transfer the medical records of Patients E and F. Witness Three testified that Dr. Mills refused to send said records to the new pediatrician until Witness Three and her husband paid certain co-pays she claimed were outstanding. (Tr. of October 5, 2000 at 12.) Witness Three further explained that neither she nor her husband understood how Dr. Mills arrived at the total amount allegedly owed, and there was no clarification on this issue.

The father of Patients E and F (herein referred to as Witness Four) corroborated his wife's testimony, explaining that after he and his wife decided to switch to a new pediatrician, he went to the Appellant's office to sign a release for the transfer of medical records. (Tr. of October 5, 2000 at 44.) Witness Four testified that Dr. Mills informed him that she would like Witness Four and his wife to pay her bill before she transferred the medical records of Patients E and F. Moreover, Witness Four stated that Dr. Mills informed him that in addition to the copays, he

and his wife would have to pay for the transfer of medical records. (Tr. of October 5, 2000 at 52). Witness Four responded that they would not pay the bill until Dr. Mills accounted for the amounts listed, at which time, Dr. Mills agreed to transfer the records and give an accounting of the amounts allegedly owed. Witness Four explained, however, that the records promised were not transferred until after he contacted the Department of Health a couple of weeks later. (Tr. of October 5, 2000 at 46.)

In addition to the testimony of Witnesses Three and Four regarding Dr. Mills's care of Patients E and F, the Board heard extensive testimony from Dr. Eden on this subject. In regards to Dr. Mills's treatment of Patient E, Dr. Eden testified that it is not customary practice for a pediatrician to act aggressively when pediatric patients express agitation about receiving injections. With respect to Dr. Mills's care for Patient F, Dr. Eden testified that there was nothing in Patient F's chart that would lead him to conclude that Patient F would be a midget, an elf, or a dwarf. Dr. Eden further explained that though Patient F was short, she was proportional for her weight and he would characterize her growth as normal. (Tr. of October 19, 2000 at 36.) Though Dr. Eden conceded that Patient F was only in the fifth percentile in terms of weight and that a doctor would want to monitor the child's growth given such facts, he stated that it would not be cause for alarm. (Tr. of October 19, 2000 at 67.) Furthermore, Dr. Eden explained that although the cardiologist did find a slight heart murmur in Patient F, absent a failure to thrive, Dr. Mills had no basis for her suspicions that Patient F suffered from a disease known as William's Syndrome. (Tr. of October 19, 2000 at 74.) In regard to the transferring of

medical records, Dr. Eden testified that in his opinion it would violate the standard of care for a doctor to withhold a medical record for an unpaid balance. (Tr. of October 19, 2000 at 28).

Count Seven

Count Seven charged Dr. Mills with unprofessional conduct, in violation of R.I. Gen. Laws § 5-37-5.1, for the acts referred to in the Summary Suspension of October 19, 1999, and for the collective and cumulative impact of the aforementioned acts of misconduct. This charge relates to all of the testimony throughout these proceedings, paraphrased in the discussion of the preceding counts. Based on the cumulative weight of the evidence presented throughout the proceedings, the Board concluded that the Appellant is presently unfit to practice medicine.

II. Standard of Review

The Court's review of a decision by the Department of Health is controlled by R.I. Gen. Laws 1956 § 42-35-15(g), which provides for review of a contested agency decision:

> (g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> (1 In violation of constitutional or statutory provisions;

(2 In excess of the statutory authority of the agency;

(3 Made upon unlawful procedure;

(4 Affected by other error or law;

(5 Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(6 Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

This section precludes a reviewing court from substituting its judgment for that of the agency in regard to the credibility of the witnesses or the weight of the evidence concerning questions of fact. *Costa v. Registry of Motor Vehicles*, 543 A.2d 1307, 1309 (R.I. 1988); *Carmody v. R.I. Conflict of Interest Commission*, 509 A.2d 453 (R.I. 1986). This is true even in cases where the court, after reviewing the certified record and evidence, might be inclined to view the evidence differently from that of the agency. *Berberian v. Dept. of Employment Security*, 414 A.2d 480 (R.I. 1980). This Court will "reverse factual conclusions of administrative agencies only when they are totally devoid of competent evidentiary support in the record." *Milardo v. Coastal Resources Management Council*, 434 A.2d 266, 272 (R.I. 1981). Questions of law, however, are not binding upon a reviewing court and may be freely reviewed to determine what the law is and its applicability to the facts. *Carmody v. R.I. Conflicts of Interests Commission*, 509 A.2d at 458. The Superior Court's role is to examine whether any competent evidence exists in the record to support the agency's findings. *Rocha v. Public Util. Comm'n*, 694 A.2d 722, 727 (R.I. 1997). The Superior Court is required to

uphold the agency's findings and conclusions if they are supported by competent evidence.

Rhode Island Public Telecommunications Authority, et al. v. Rhode Island Labor Relations Board, et al., 650 A.2d 479, 485 (R.I. 1994).

Substantial Evidence

Appellant argues that this Court should reverse the Board's decision because the Board's findings are not supported by the substantial weight of the evidence. Specifically, the Appellant contends that the evidence presented during the hearings do not support the Board's conclusions regarding (1) the anonymous complaint Appellant made to DCYF; (2) Appellant's concerns regarding Witness One's failure to mention that Patient A suffered from a near SIDS episode; (3) Appellant's treatment of patients outdoors; (4) Appellant's differential diagnosis that Patient F might suffer from William's Syndrome; (5) Appellant's willingness to transfer the medical records of Patients E and F; (6) Appellant's willingness to undergo an evaluation; (7) Appellant's Rhode Island Hospital Application; and (8) the issue of whether Appellant suffered from a mental impairment. The Board argues that under the fair preponderance standard, the Board had substantial evidence to find unprofessional conduct on the part of the Appellant for each of the seven counts. This Court addresses each of the Appellant's arguments below.

DCYF COMPLAINT

Appellant argues that the testimony presented during the hearings demonstrates that the Appellant had legitimate

concerns in filing a complaint with DCYF, against the parents of Patients A, B, C, and D. Moreover, Appellant contends that the Board's findings are inconsistent with the applicable child abuse reporting statutes, which specifically provide for hot line reports. In reviewing the Board's decision, this Court finds that substantial evidence of record existed in the form of witness testimony for the Board to conclude that the Appellant's complaint to DCYF constituted unprofessional conduct.

Though the Appellant contests the Board's determinations with regard to the credibility of the State's witnesses, it is not for this Court to substitute its judgment for that of the agency regarding the credibility of witnesses or the weight of the evidence with respect to questions of fact. *Tierney et al. v. The Department of Human Services*, 793 A.2d 210 (R.I. 2002). As with other witnesses, where evaluation of an expert's testimony implicates determinations of credibility, the Court should defer to the agency's determinations. See *Environmental Scientific Corp. v. Durfee*, 621 A.2d 200, 206-07 (R.I. 1993). The Board heard testimony from Witness One and Witness Two, both of whom the Board found to be credible, that the Appellant began calling their home and harassing them after they filed a complaint against the Appellant with the Department of Health. Each of these witnesses testified that Appellant had never expressed any concern that abuse might be occurring in their home and that there was no foundation for such concerns. The Appellant herself admitted that she placed an anonymous call with the Child Abuse Hot Line regarding Witness Two. The Board also found convincing the testimony of Dr. Eden, an expert in the field of pediatrics, who stated that based on the records of Patients A, B, C, and D, there was no reason for the Appellant to suspect

that abuse was occurring. Furthermore, Dr. Eden testified that if a pediatrician did suspect child abuse, it would not be in accordance with the standard practice to place an anonymous call. He explained that standard practice requires a physician to state their name and follow the phone call up with a written report.

Moreover, the Appellant's handling of the complaint was in direct contravention of the law. The statute that governs reports by physicians who suspect abuse or neglect is R.I. Gen. Laws § 40-11-6. The statute reads:

> "(a) When any physician or duly certified registered nurse practitioner has cause to suspect that a child brought to him or her for examination, care, or treatment, is an abused or neglected child as defined in this chapter, or when he or she determines that a child under the age of twelve (12) years is suffering from any sexually transmitted disease, he or she shall report the incident or cause a report thereof to be made to the department as provided in subsection (b).
>
> (b) An immediate oral report shall be made by telephone or otherwise, to both the department and law enforcement agency and shall be followed by a report in writing to the department and law enforcement agency explaining the extent and nature of the abuse or neglect the child is alleged to have suffered.
>
> (c) The department, upon receipt of such a report by a person other than physician or duly certified registered nurse practitioner alleging that a child has been physically abuse [sic], shall investigate the report, and if the investigation reveals evidence of physical or sexual abuse, the

> department shall have the child examined by a licensed physician or duly certified registered nurse practitioner. Any child protective investigator shall, with or without the consent of the parent or other person responsible for the child's welfare, have the right to remove the child from the place where the child may be to secure the examination required by this subsection. Upon completion of the examination, it shall be mandatory for the physician or duly certified registered nurse practitioner to make a written report of his or her findings to the department."

In addressing questions of statutory interpretation, the Supreme Court of Rhode Island had held that the Court "must literally interpret a clear and unambiguous statute and attribute the plain and ordinary meaning to its words."

Arnold v. R.I. DOL & Training Bd. of Review, 822 A.2d 164, 168 (R.I. 2003) (citing *Solas v. Emergency Hiring Council of Rhode Island,* 774 A.2d 820, 824 (R.I. 2001)). The above statute unambiguously distinguishes between the duty of physicians, as compared to the duty of ordinary citizens in filing complaints regarding abuse. It is clear that a physician has a higher duty when reporting a case of suspected child abuse. Thus, this Court finds that there was substantial evidence in the record to support the Board's finding that the complaint made by Appellant constituted unprofessional conduct.

Treatment Outdoors

Appellant argues that the Board erred in finding that Appellant's decision to treat her patients outdoors constituted unprofessional conduct. Appellant maintains that

such outdoor treatments were necessary because of problems in the various office buildings where she decided to locate her offices. Furthermore, Appellant asserts that based on Dr. Eden's testimony during the hearings, outdoor examinations may not be a reason to disqualify someone from practicing medicine and outdoor exams are permissible in cases of emergency. In view of all the testimony presented during the hearings, this Court finds substantial evidence in support of the Board's finding that Appellant's outdoor treatment of patients constituted unprofessional conduct.

"Judicial scrutiny on appeal 'is limited to a search of the record to determine if there is any competent evidence upon which the agency decision rests. If there is any such evidence, the decision will stand.'" *Restivo v. Lynch*, 707 A.2d 663, 665 (R.I. 1998) (quoting *E. Grossman & Sons, Inc. v. Rocha*, 118 R.I. 276, 285-86, 373 A.2d 496, 501 (R.I. 1977)). This Court finds substantial evidence on the record to support the Board's finding that Appellant's treatment of patients outdoors constituted unprofessional conduct, including the testimony of an expert witness who explicitly stated that the Appellant's use of outdoor treatment was not within the parameters of professional conduct. Under § 5-37-5.1(19) unprofessional conduct includes:

> "Incompetent, negligent, or willful misconduct in the practice of medicine which includes the rendering of medically unnecessary services, and any departure from, or the failure to conform to, the minimal standards of acceptable and prevailing medical practice in his or her area of expertise as is determined by the board. The board need not establish actual injury to the patient in order to adjudge a physician or limited registrant guilty

> of the unacceptable medical practice in this subdivision."

It is well established that this Court effectuates the Legislature's intent "by examining a statute in its entirety and giving the words their plain and ordinary meaning." *Parkway Towers Assocs. v. Godfrey*, 688 A.2d 1289, 1294 (R.I. 1997) (quoting *In re Falstaff Brewing Corp.*, 637 A.2d 1047, 1049 (R.I. 1994)). This Court's primary objective in applying a statute is to ensure that its enforcement is consistent with the statute's underlying purpose.

Kirby v. Planning Board of Review of the Town of Middletown, 634 A.2d 285, 290 (R.I. 1993) (citing *Zannelli v. Di Sandro*, 84 R.I. 76, 121 A.2d 652, 655 (R.I. 1956)).

While the Rhode Island Supreme Court has not specifically addressed the extent of the Board's authority in determining what constitutes inappropriate conduct, other jurisdictions have found that a Board of Medicine and licensees possess sufficient understanding in the field of medicine to make such determinations. The Court of Appeals of Michigan has held that a statutory provision, which prohibits departure from minimal standards of practice is "sufficiently certain and definite" based on "well recognized meanings" to afford a licensee fair notice as to what type of conduct is unacceptable in the field of medicine. See *Joseph W. Rucker, M.D. v. Michigan Board of Medicine*, 138 Mich. App. 209, 360 N.W.2d 154 (Mich. App. 1984). "It is therefore, proper for the Board of Medicine, having education and experience, to determine whether petitioner's actions constituted a violation of minimal standards." Id. (citing *Sanchick v. State Board of Optometry*, 342 Mich. 555, 70 N.W.2d 757 (1955); *Warchuis v. State Bd. of Registration in Medicine*, 285 Mich. 699, 281

NW 410 (1938)). Adopting this same reasoning, the Supreme Court of Arkansas has held that certain behavior is so obviously unprofessional that it not needs to be explicitly spelled out in a statute in order for a Board of Medicine to deem that it warrants a severe sanction. Thus, in *Arkansas State Medical Board v. John Q. Elliott, M.D.*, 263 Ark. 86, 563 S.W.2d 427 (Ark. 1978), the Supreme Court of Arkansas held that suspension of the appellant's license was appropriate where the appellant gave two prescriptions to the same man under two different names who admittedly had nothing wrong with him. That there was no law expressly proscribing such conduct could not excuse such sub par behavior on the part of a practicing physician. See id.

In the present case, there was substantial evidence in the record to confirm the Board's finding that Appellant's outdoor treatment of her patients was not in accordance with the minimal standards of acceptable and prevailing medical practice. Appellant herself admitted that on one occasion, she treated a child in a parking lot inside the patient's car, and other times, she would treat the children outside in the backyard. She also conceded that she administered the chicken pox vaccine in the yard and that she drew blood from patients B and D outdoors. According to Dr. Eden, the outdoor treatment Appellant engaged in was not justified, regardless of the alleged contamination in the Appellant's office buildings. He explained that while contamination in the offices would have necessitated alternative venues for the examinations, such outdoor examinations were inconsistent with the appropriate standard of care. Furthermore, the Board did not believe that every building owned by Appellant was contaminated as suggested in her testimony. Appellant failed to present

any evidence during the hearings to substantiate her claims that each of her office buildings that she inhabited was contaminated. Additionally, Appellant made admissions to the effect that she permitted her medical assistant to go in and out of the allegedly contaminated buildings while she waited outside. Appellant also testified that everything, including patients' medical records, had become contaminated. Yet at the same time, admitted that she placed these same records in her parents' home and would have her medical assistant retrieve them when they were needed. Based on the aforementioned evidence, this Court concludes that there was substantial evidence in support of the Board's determination that Appellant's outdoor treatment constituted unprofessional conduct.

Williams Syndrome

Appellant next argues that the evidence presented during the proceedings demonstrates that Appellant's differential diagnosis that Patient F might suffer from "Williams Syndrome" was not unfounded. Appellant asserts that the Board's conclusion that later examination revealed nothing wrong with Patient F is contrary to the evidence that the Board heard. In light of the cumulative testimony presented during the hearings, this Court finds that there was substantial evidence supporting the Board's finding that the Appellant's medical treatment of Patient F constituted unprofessional conduct.

Under § 5-37-5.1(19), discussed in the preceding section, the incompetent or negligent practice of medicine is sufficient for the Board to find that a physician has committed unprofessional conduct. During the proceedings,

the Board heard Dr. Eden testify that a competent physician would not have suspected that Patient F had Williams Syndrome. Furthermore, according to Witness Three, whom the Board found to be credible, when Witness Three took Patient F for a heart exam, the doctor said that there was no reason for additional tests to be conducted. Though Appellant claims her medical diagnosis was appropriate, Appellant failed to present any experts to confirm her assertions that her medical treatment of Patient F was reasonable. While our Supreme Court has not directly addressed the degree of discretion a medical board ought to be afforded when making a decision regarding the adequacy of a physician's care, this issue has been addressed by other courts. Other jurisdictions have concluded that a board, which has the benefit of expert testimony in reaching its decision, should be afforded a great deal of deference in its determinations as to what constitutes an extreme departure from the ordinary standard of care. See *Livingston, M.D. v. Arkansas State Medical Board*, 288 Ark. 1, 701 S.W.2d 361 (Ark. 1986). Thus, in *Livingston M.D. v. Arkansas State Medical Board*, the Supreme Court of Arkansas affirmed suspension of the appellant's license, where the appellant negligently led a patient to believe that she was pregnant for a period of four months. Though the appellant in that case offered expert testimony to the effect that the appellant's records demonstrated an adequate standard of care, the Court concluded that a physician's conduct does not have to rise to the level of malpractice for it to constitute unprofessional conduct warranting suspension of a license. See id. Similarly, in the present case, this Court finds that there was substantial evidence in the record to support the Board's conclusion that Appellant's treatment of Patient F

did not conform to the ordinary standard of care and warranted a sanction that the Board deemed appropriate.

Record Transfer Issue

Next, Appellant argues that the Board's finding that Appellant refused to transfer records "until all fees were paid for services rendered" is clearly erroneous in light of the substantial weight of the evidence. The Appellant fervently denies wrongfully withholding Patients E's and F's records despite the testimony of Patients E's and F's parents that the Appellant made the payment of a disputed bill a condition precedent to sending said records. Upon review of the Board's decision, this Court finds that there was substantial evidence on the record to support the Board's finding that the Appellant acted unprofessionally in failing to transfer patients' records to a new pediatrician in a timely manner.

As stated above, this Court will not substitute its judgment for that of the Board with respect to the credibility of witnesses. See *Tierney, et al.*, 793 A.2d 210, 213 (R.I. 2002). Thus, no new determinations will be made here as to the credibility of the parents of Patients E and F, where the Board has already found these witnesses to be credible. See id. As such, this Court is confined to making a determination solely on the basis of whether there was competent evidence on the record to support the Board's finding that the Appellant acted unprofessionally in her transferring of patients' records. See id. at 212.

With respect to this issue, the parents of Patients E and F, both of whom the Board found to be credible, each testified that the Appellant refused to transfer their daughters' medical records until they paid the bill Appellant claimed

they owed. In reviewing copies of the Appellant's billings to the family, the record reveals that the services rendered and amounts shown as due on the bills were incomprehensible to the Board. Appellant's refusal to transfer records until the parents of Patients E and F paid the amount shown on bill was substantiated by the fact that Appellant did not turn over the patients' records until the Department of Health intervened. Thus, this Court finds substantial evidence in the record for the Board's finding that Appellant acted unprofessionally in the transferring of patients' records.

Evaluation Issue

Appellant argues that she is willing to be examined by a psychiatrist, but not one who is subject to the Board's control. Appellant asserts that she has been examined by another psychiatrist and it has been determined that she suffers from no mental impairment. Therefore, there is no reason why she should not be permitted to practice medicine. This Court finds substantial evidence on the record to support the Board's finding that the Appellant had not cooperated with the Board's order that Appellant submit to a psychiatric examination in accordance with the conditions provided by the Board.

Pursuant to § 5-37-5.2(e)(2), the Investigating Committee of the Board may exercise the authority afforded by § 5-37-1.3(10) to assist the Board, if the Investigating Committee determines that the licensee is suffering from an impairment. The Investigating Committee was enlisted by the Director of Health to investigate the Appellant's behavior after a complaint was filed against the Appellant in 1998. After conducting a review of the Appellant, which included

interviewing the Appellant and potential witnesses, the Committee felt it appropriate for Appellant to submit to a psychiatric examination. Based on the evidence presented, the Board concluded that the Appellant had not as of yet submitted to an evaluation. During Court hearings, the Appellant expressed reluctance to submit to an examination by a psychiatrist preapproved by the Board as opposed to one of her own choosing.

Thus, this Court finds that there is substantial evidence in support of the Board's finding that the Appellant did not comply with its order.

Rhode Island Hospital Application

Appellant argues that her Rhode Island Hospital application did not contain false information and asserts that her usage of the word "acceptance" in relation to Yale and Brown was in relation to her acceptance as a match candidate for those programs. Appellant further contends that her reference to her two years of medical school at Case Western University was not a misrepresentation because she accurately stated her role as a Ph. D candidate (registered but not matriculated in the medical school), accurately identified the school where she earned her medical degree, and identified all her residencies and internships. This Court finds that substantial evidence existed in the form of testimony and exhibits to conclude that the Appellant committed unprofessional conduct in the submission of her Rhode Island Hospital application.

As the Board reviewed Appellant's application for staff privileges and the information obtained from the Rhode Island Hospital Staff Credentials Committee, this Court must give deference to the Board, as the trier of fact, in

finding that the Appellant made several misrepresentations in her efforts to obtain staff privileges. See *Rhode Island Public Telecommunications Authority, et al. v. Rhode Island Labor Relations Board, et al.*, 650 A.2d 479, 485 (R.I. 1994). Based on the Board's thorough evaluation of the exhibits regarding this matter, this Court finds that there was substantial evidence to support the Board's finding that Appellant "provided false information to the Rhode Island Hospital Credentials Committee in an effort to gain staff privileges at the hospital." (Administrative Board Decision at 4.) The Board found that the Appellant made several misrepresentations on her application, including her affiliation with Case Western University Medical School, her admission to the Yale and Brown residency programs, and her alleged voluntary departure from two different internships. This Court finds that there was competent evidence to justify the Board's findings on this charge.

III. Adequacy of Evidence

Next, Appellant asserts that certain testimony permitted in the hearings constituted hearsay that unfairly biased the proceedings. One particular example that Appellant focuses on is Witness One's testimony that when Patient B dialed star 69 after a hang-up, Appellant answered. Based on the rules governing administrative hearings and the nature of the hearsay evidence, this Court finds that the Board's admittance of hearsay evidence during the hearings did not unfairly bias the proceedings.

This Court has consistently acknowledged that the parameters for admitting relevant evidence in administrative proceedings are broad in scope. "Administrative hearings

are not held to the same evidentiary standards as criminal or even judicial civil proceedings. Hearsay is quite acceptable in administrative hearings." *In re Joseph A. Cross*, 617 A.2d 97, 102 (R.I. 1992) (quoting *Craig v. Pare*, 497 A.2d 316, 320 (R.I. 1985)) Thus, in *In re Joseph A. Cross*, the Supreme Court held that admission of a complaint letter against appellant in an administrative hearing was permissible because hearsay doctrines were not applicable. See id. Similarly, in the present case, traditional hearsay rules were not applicable and the hearsay evidence in question was clearly relevant to the proceedings. Consequently, this Court finds that the Board's decision to permit such hearsay testimony did not prejudice the Appellant's right to a fair and unbiased proceeding.

IV. Arbitrary and Capricious

Next, Appellant argues that in light of the evidence presented, the Board's decision is arbitrary and capricious. Appellant contends that the testimony of the State's witnesses directly contradict the Board's findings. In support of her argument, Appellant makes reference to certain statements by the State's witnesses during their testimony, and claims that they pose inconsistencies in the Board's case against her. Upon a thorough review of the Board's decision, this Court finds that the Board's determination that Appellant was guilty of unprofessional conduct in the practice of medicine was not arbitrary and capricious.

The Supreme Court of Rhode Island has repeatedly declared that the arbitrary and capricious standard of review is limited in scope and affords great deference to agency decisions. "Use of the arbitrary and capricious

standard means that reviewing courts will uphold administrative decisions ... as long as the administrative interpreters have acted within their authority to make such decisions and their decisions were rational, logical and supported by substantial evidence." *Domingo Goncalves v. NMU Pension Trust*, 818 A.2d 678, 682-83 (R.I. 2003) (citing *Doyle v. Paul Revere Life Insurance Co.*, 144 F.3d 181, 184 (1st Cir. 1998)). *See also Evan J. Connor v. Paul Bjorklund, et al.*, 833 A.2d 825, 2003 R.I. LEXIS 197, No. 2002-720-A., slip op. at 5 (R.I., filed October 31, 2003) (here in a civil action, the Rhode Island Supreme Court refused "to second-guess the trial justice's credibility findings" where the defendants cited "certain discrepancies between plaintiff's trial testimony and other evidence contained in the record").

In applying the arbitrary and capricious standard to the present case, this Court recognizes that under R.I. Gen. Laws § 5-37-5.1, the Board of Medical Licensure and Discipline is afforded wide discretion in making determinations as to what constitutes unprofessional conduct. The statute specifically reads that unprofessional conduct is not limited to the thirty one items specifically laid out in the statute and provides that the items mentioned "may be further defined by regulations established by board with the prior approval of the director." R.I. Gen. Laws § 5-37-5.1. In the case at bar, the Board heard from several witnesses including the mother and father of patients A, B, C, and D; the mother and father of patients E and F; Dr. Eden, an expert in the field of pediatrics; and the Appellant herself. Additionally, the Board reviewed 28 exhibits. Throughout the hearings, Appellant had numerous opportunities to call witnesses on her behalf and submit evidence to substantiate her claims. At no time

during the proceedings did Appellant attempt to do so. Moreover, the Board's decision includes a thorough analysis of its finding on each charge and explained in detail the evidence upon which they based their decision. Consequently, this Court finds that the Board's decision was not arbitrary or capricious.

V. Investigatory, Adjudicatory and Advisory Functions

The Appellant argues that Attorney Bruce McIntyre (McIntyre), who prosecuted the instant action, commingled functions as prosecutor and witness. Appellant contends that throughout the proceedings McIntyre injected questions that suggested McIntyre's firsthand knowledge of events and his own characterization of what had occurred. The Board counters by arguing McIntyre's role as prosecutor was wholly appropriate and did not unfairly taint the proceedings. The Board argues that this subject is thoroughly covered by Rule 3.7 of the Rhode Island Rules of Professional Conduct. The Board further contends that Appellant's attempt to prohibit McIntyre from acting as prosecutor in the present case is a harassing technique that is without merit. This Court finds that the Board's decision to allow Attorney Bruce McIntyre to prosecute the case was entirely proper.

In *El Gabri v. Rhode Island Bd. of Med. Licensure & Discipline*, 1998 R.I. Super. LEXIS 36, the Rhode Island Superior Court addressed a similar argument made by an appellant who was challenging the Board's decision to revoke his license. The appellant claimed that McIntyre's role as prosecutor and advisor to the Board was unconstitutional. The Superior Court rejected appellant's argument

and concluded that McIntyre's dual role as prosecutor and advisor to the Board was not violative of due process because nothing in the record demonstrated that McIntyre exercised influence over the Hearing Committee. *El Gabri*, 1998 R.I. Super. LEXIS 36 at *33-34. "Broadly speaking, the separation of functions that prevails in a modern administrative agency, allotting the prosecutorial function to a staff of attorneys or other personnel who will not participate in the eventual decision, is a common and recommended feature of American administrative enforcement activity." *La Petite Auberge v. Rhode Island Comm'n for Human Rights*, 419 A.2d at 284 (R.I. 1980). As was the appellant's argument in *El Gabri*, the argument made by the Appellant in the present case is without merit. There was nothing in the record to suggest that Attorney McIntyre exercised any influence over the Hearing Committee's decision. Moreover, the record demonstrates that McIntyre acted squarely within the boundaries of his role as prosecutor.

VI. Sanctions

Finally, during Court hearings, the Appellant argued that the sanction of indefinite suspension of her medical license was excessive in light of other medical board disciplinary sanctions that could have been imposed. The Board holds that suspension of Dr. Mills's license is the appropriate sanction until she submits to physical and psychiatric examinations conducted by medical professionals pre-approved by the Board. This Court finds that the Board did not err in using their discretion to reach what they deemed to be an appropriate sanction for Dr. Mills's unprofessional conduct.

This Court will not substitute its judgment for that of the Board concerning the appropriate discipline for the Appellant, as a Medical Board is in the best position to make determinations as to what constitutes an appropriate sanction. See *Jack Marrs, M.D. v. Michigan Board of Medicine*, 422 Mich. 688, 375 N.W.2d 321, 324 (Mich. 1985) (holding that the Court of Appeals erred in finding that the Board abused its discretion in imposing a one-year suspension for a doctor's failure to conform to prevailing minimum professional standards); see also *State of Rhode Island Department of Corrections v. Rhode Island Brotherhood of Correctional Officers*, 725 A.2d 296 (R.I. 1999) (declaring that an arbitrator improperly substituted his judgment for that of the director regarding what the proper disciplinary action should be). A Medical Board is empowered to impose discipline as it deems proper. *Bryce v. Board of Medical Quality Assur.*, 184 Cal. App. 3d 1471, 229 Cal. Rptr. 483 (Cal. App. 4 Dist. 1984). Regarding the imposition of discipline, "it is well settled that in reviewing the penalty imposed by an administrative body which is duly constituted to announce and enforce such penalties, neither a trial court nor an appellate court is free to substitute its own discretion as to the matter; nor can the reviewing court interfere with the imposition of a penalty by an administrative tribunal because in the court's own evaluation of the circumstances the penalty appears to be too harsh. Such interference will only be sanctioned when there is an arbitrary, capricious, or patently abusive exercise of discretion." *Shakin v. Board of Medical Examiners*, 254 Cal. App. 2d 102, 62 Cal. Rptr. 274 (Cal. App. 2nd Dist. 1967).

Thus, this Court finds that the suspension of Appellant's license was the appropriate sanction imposed in relation to

the well-supported findings of the Board and did not constitute an abuse of discretion. During oral arguments before this Court, the Appellant requested that this Court modify the sanction to include a provision that a psychiatrist of the Appellant's own choosing be permitted to attend the psychiatric examination the Board is requiring her to undergo before she can be considered for reinstatement. This Court's consideration of such a request would be inappropriate and would constitute a substitution of its judgment in place of the Board's as to the conditions of Appellant's reinstatement.

Conclusion

After review of the entire record, this Court finds the decision of the Board was supported by the reliable, probative, and substantial evidence in the record, and was not affected by error of law. Furthermore, this Court finds that the Board's decision was not arbitrary or capricious or an abuse of discretion. Thus, the substantial rights of Appellant have not been prejudiced. For the reasons stated herein, the decision of the Board, which finds the Appellant in violation of 1956 R.I.G.L. § 5-37-5.1, is affirmed. Counsel shall prepare an appropriate judgment for entry.

Supreme Court, U.S.
FILED
JAN 10 2005
OFFICE OF THE CLERK

No. 04-739

In The
SUPREME COURT of the UNITED STATES

GERALDINE MILLS, M.D.

Petitioner

v.

PATRICIA A. NOLAN, M.D., M.P.H.,DIRECTOR
DEPARTMENT OF HEALTH

Respondent

On Petition For Writ of Certiorari
To The Supreme Court Of Rhode Island

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Geraldine Mills, M.D.
Prose
191 Squantum Drive
Warwick, Rhode Island 02888
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OTHER AUTHORITIES

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INTRODUCTION

The Decision of the Rhode Island Supreme Court should not be allowed to stand because it incorrectly suggests, by its arbitrary denial of Appellant's appeal, that Medical Boards of Licensure may upon official whim deprive a physician or for that matter any citizen of their constitutional right to have a "protected property interest in licenses granted to them by governmental agencies."

Respondent's Brief in Opposition to the Petition for Writ of Certiorari demonstrates why the Petition should be granted, because it accurately identified the crucial issues and illustrates not only the confusion surrounding the proper standard of review but is representative of the actionable misconduct of one individual. This Court should directly address the application of the Equal Protection Clause and that of Due Process to the plight of all physicians at the mercy of Medical Licensing Board sham reviews.

REASONS FOR GRANTING THE WRIT

I..THE EXCLUSION OF A PERSON FROM PRACTICE OF OCCUPATION IN MANNER OR FOR REASONS THAT CONTRAVENE DUE PROCESS OR EQUAL PROTECTION OF THE FOURTEENTH AMENDMENT

Petitioner asks this Court to articulate the Equal Protection standards that apply to all citizens of these United States to have a "protected property interest" in licenses granted to them by governmental agencies. In Schware v Board of Bar Examiners 353 U.S. 232, 238-239,77 S. Ct. 752,756, 1 L. Ed 2d 796,801 (1957) it reads, "the state cannot exclude a person from practice of law or any other occupation in manner or for reasons that contravene due process or equal protection clause of fourteenth amendment."(U.S.Const amend XIV).RI Supreme Court furthers that the "procedural safeguards that must constitutionally attend the granting and revoking of licenses follows no certain formula and due process within administrative

procedures requires opportunity to be heard in a meaningful and timely manner. Due process cannot tolerate a licensing system that makes privilege of doing business dependent on official whim."Millett v Hoisting Engineer's Licensing Division 377 A.2d (1977)Regardless of the agency's motivations, violations of law render actions of the governmental agency defective and violate due process requirements of the United States Constitution. Sections of RIGL violated cited in Table of Authorities, each goes to establish same issue of denying equal protection and due process. 1)State denies certain citizens right to NOT release medical records unless signed for, allows others right to do so (state and federal question-HPAA controls, 2) altering of original written complaints as aided by state 3) reporting suspicions of child abuse to state agency mandated by all citizens when belief is incidents to be not of accidental means; all states have similar laws-fundamental rights 4) denying subpoena of NEAR SIDS records (NEAR SIDS presented at hearing) makes everything testified to, mere conjecture on anyone's part-denies right to fair defense 5) ("court")decision on hearsay evidence @ pg 29 "gives great leeway in administrative hearings(teen's statements did not unfairly bias proceedings) denied equal protection when same hearsay rules not applied to her(Appellant's patient complaints, DEM Campbell/Sullivan re: contamination)6) use of term "antisemitism" and fabrication of stories in which to incorporate term - discrimination based on "race, creed, and religion" violating First Amendment/Civil rights Act (Russo denied claims) 7) denying Mills right to see own mental or medical health records8)subpoena of RIH application (voluntarily withdrawn on advice of Chief Officer of board Milton Hamolsky, M.D. due to unlawful tampering, discrimination). Written agreement that application is to "never be used for any purpose"(signed by all parties as "received") breached by RIH violates HCQIA where RIH failed to report denial if appeal not taken. (Now allege not a "contract" so released it 5 years later to very board Mills reported injustice to (1994); denied resume as evidence(part of application); in keeping Appellant off staff at RIH, but on staff at St Joseph,

RIH violates Sherman Antitrust Act (Appellant's former Chief Alfred Toselli admits " I personally kept her off staff at RIH.") Patrick v Burgett 486 US 94, 108 S. Ct 1658 reads, "state officials do not have the exercise of power to review private parties particular anti competitive acts and to disapprove of those that fail to accord with state policy" 9)determination of "unprofessional conduct" based on inability to use offices contaminated by hazardous substances (then determine Mills will not be allowed to submit reports on contamination)- every citizen should have the right to witnesses and evidence(Conflict of Interest- Attorney General Sheldon Whitehouse represents RI Medical Board/McIntyre and does not allow case of Whitehouse vs Speedy Oil Petroleum, Inc [the cleanup only begun after Mills determined that there was a 90.6 ppm level of gasoline vapors in her office building then reporting it to DEM State of R.I]) 10) Report to NPDB that Mills has "mental disorder" when no facts on record below to support allegation,11) reporting full indefinite suspension to patients, news, insurance cos, NPDB,Texas Board of Examiners prior to hearing, final decision or agreed upon consent order 12) Medical board's expert witness Robert Eden, M.D. testified without knowledge (ex: "don't remember what it is offhand," re: Williams syndrome, "I do not know," re: whether gasoline vapors in office) S.v.Allen 8N.C. pg 9 " the law requires he who deposes to fact should have means of knowing it...conjecture . opinions .not sufficient." He testified basing opinions on hearsay of layperson(mother's complaint only)Brouillette v Weymouth Shoe 1961 " conclusions based on hearsay objected to" and on medical book(adverse party given no notice of Reddington vs Clayman 1956, " ..no less than 3 days"),used "possibilities" (ex: "possible inappropriate call to DCYF),. State vs Sullivan 1957 "... seek answers in probabilities.."As pediatrician he testified "possibly impaired judgment," (Wharton vs Meyers 1939, " ..physicians ...upon mental capacity no greater weight than ..laymen..") Sanzari vs Rosenfeld 1961 and he would transfer records without signed releases.12) No statutory immunity protects board (RIGL 9-31-1 whereby state waives sovereign immunity in tort(Andrade 1982);

adverse witnesses not immune-act with malice RIGL5-37-1.5

It is actionable misconduct for McIntyre to have threatened Mills with suspension if she did not release records, while fully aware releases had not been signed. Mother testified in 3rd District Court September 21, 2004, McIntyre told her what to do. Defendant's reply @ pg 3 # 15," makes suggestion that McIntyre was a member of the Board;"they state, "at no time did McIntyre participate in any decision making process and never was or will be a member of the board."(See Mills v McIntyre Petition for Writ - board interoffice memos cite McIntyre as "staff member of the board"(transcript March 16, 2001 Justice Silverstein questions McIntyre if he is counsel "for" or "on" the board or both. McIntyre answers, "Yes, I guess both." Do they refer to "decision making"as "final decision"or general decisions throughout process (influence). He did make determinations in many "decision-making processes"1)determine Jerome Rogoff, M.D.(Past Pres Mass Psychiatric Society) "not competent"to evaluate Mills(McIntyre never responded to letter from Mills' counsel requesting if evaluation was ever presented to board and if so how they came to determine that Dr Rogoff was " not competent" to evaluate Mills.2) that it was an "unfounded telephone complaint" of suspicion of child abuse that Mills reported to DCYF (McIntyre theorized call "unfounded" at start of Hearing stating, "it was this last act that led to her temporary suspension," pg 6 T 8/23/00. Though no child abuse expert determined it "unfounded"(Mills denied Dr Alexander as witness and affidavit read, "call to hotline was not out of line and not unreasonable") the board's own expert Eden testified, " there was a possibility that she inappropriately accessed DCYF," but having admitted the old medical records were illegible, he could only see one injury, excluding 16 others he could not read 3) McIntyre made the determination Mills "only" reported a girl who had attained 18years of age.(Record below-original tape recorded call to hotline/transcript/CPS report identify 16 year old as alleged victim). The instant case and petition for Writ is not about Mr McIntyre. Fourteen of twenty two so called "misstatements" in Defendants brief concern McIntyre.

The issue before this Court is the lower court denying Appellant a careful review of the certified record below. Certainly McIntyre has abused his powers, was party to if not sole inventor of the delusional and fabricated distortions of the facts as they exist in this case. The forum for this is the Writ of Certiorari in Mills vs RI Medical Board and McIntyre.

II.FEDERAL QUESTION RULED ON BY STATE-RESPONSE

Defendants repeatedly state in reply brief Appellant did not present her constitutional or federal claim in lower courts. At pg # 9 it reads," failure to pass upon a federal question leads one to assume the omission was due to want of proper presentation in the state court. Unless the aggrieved party before this court shall affirmatively demonstrate otherwise." At pg 12, " if no opinion is written by the highest court it appears that the state court judgment might have rested upon a nonfederal ground this court will decline jurisdiction." This would be plain conjecture, assumption of the thoughts the Justices might have had. Can it be had that one is not to postulate federal questions but must without doubt present them, but on the other hand a court may deny on assumption and conjecture? It is Appellant's belief that the highest state court did not rest upon nonfederal ground or want of proper presentation, but instead for some other agenda. It would be hard pressed to make a decision based on adequate nonfederal ground for state court when violations of equal protection of law and due process run rampant throughout the case. Is it not all conjecture? Moreover, agency's decisions on questions of law are entitled to deference and are subject to De Novo review in both superior and supreme courts. Carmody v R.I. Conflict of Interest Comm 509 A.2d 453 (R.I. 1986) The mere granting of evidence in case of Mills v Board and McIntyre by the highest state court and allowing her oral argument suggests that some other agenda rests here. This Petitioner has not failed to comply with applicable state procedures in making the federal claim. She has not just made general references to the Constitution but clearly in both appeal to lower court and in writ petition to higher state court has identified with specificity and plead the same, both as prose, and with legal representation.

Review of 70 page petition for writ (supplemental statement on record)cites:pg 5 "..not afford her due process and constitutional right to know adversarial witnesses,"@ pg 9 " denial of hearsay while allowing defendants hearsay," @pg 10 "To be afforded same due process..equal protection..prior to taking of individual's property interest; ...not afforded constitutional right to have a full investigation prior...",@ pg 55 " Mills' rights to the confidentiality clause of this act were vioalted-civil rights. They cite, Bayview Towing,Inc v Stevenson 676 A.2d 325TI1996,"he..must state in clear..direct language which specific article,section,clause..alleged...violated."They state Appellant only cited 14th Amendment without specifying equal protection, due process, privileges, immunities. Pleadings were made with specificity, particularity. Unable to address every citation to denial of due process, equal protection of law, civil and constitutional rights, it is heretofore cited 1) @ pg 2 appeal to "court"- standard of review of APA RI Gen Law 42-35-1 et seq (g) 1-6 1) in violation of constitutional or statutory provisions....2) in excess of statutory authority.3) made upon unlawful procedure 4) affected by other error or law and 5) clearly erroneous in view of reliable probative and substantial evidence on record 6) arbitrary or capricious by reason of abuse of discretion and clearly unwarranted. (also @ pg 14 writ to highest RI court) Cited was 1) Pierce vs Underwood US 487 U.S. 552, 101 L.Ed 2d 490,108 S. Ct. 2541 " there must be adequate relevant evidence so that a reasonable person could accept the evidence as sufficient to support the agency's conclusion." A) mother states,"it's a bizarre statement gasoline vapors"(doctor tested and found), record is devoid of supporting documents because the Board refused to allow Appellant to introduce them. A decision cannot be made by a reasonable person without adequate relevant supporting evidence. Where the credibility determination is irrational Breeden v. Weinberger 493 F.2d 1002 (4th Cir) or agency has misconstrued it, the court may ignore credibility determinations made by agency. Robinson v Workmen's Compensation Appeal Bd 589 A.2d 778 Where Supreme Court finds agency has drawn improper or irrational

inferences from evidence Court will not demur from correcting such errors. Here agency's resolution of factual matters was defective, prejudicial wherein the court may deem it erroneous and reverse as noted in Millerick v. Fascio 384 A.2d 601 R.I. 1978 The record as in (A) was deficient allowing court to vacate administrative decision as being clearly erroneous in view of reliable probative and substantial evidence contained in the whole record. DiPrete v Morsilli 635 A.2d 1155 1994 R.I.(B) Pled to "court" as follows: "Board's decision ridiculed Mills' statements regarding contamination of her office implying it was the result of her imagination or delusion, while at same time state was raising questions about legitimacy of Mills' concerns; its own DEM confirming accuracy of her observations."3M Corp test results 90.6ppm gasoline 2/5/99)Court should have taken notice of its own records revealing a seriously hazardous situation(Attorney General Whitehouse vs Speedy Oil Petroleum,Inc C.A.No: PC00-229.Taking place instead was same Attorney General became counsel for McIntyre/board, denying Mills state's case against Speedy as her evidence while making numerous motions to board/court to reopen for it. Proceedings at board had not closed when 3 motions were placed. During hearing McIntyre denied documents from being submitted(should be duty of AHO).Attorney General denied them based on "is all character witnesses,...will not enlighten panel any further."(Interim Order - Mills v Medical board and McIntyre) The court records contradict the board's rejection of Mills' environmental concerns. In appeal to "court", it reads, " the board points out Mills failed to substantiate the reports of any agencies, but it was the State that bore the burden of proof in these proceedings." The State should have INVESTIGATED its own complaint thoroughly, and inquiry into the records of its own agencies would seem to be a FAIRLY FUNDAMENTAL requirement prior to making accusations of delusion or fabrication against Appellant. This denied her all due process and equal protection stripping her of all democratic principles for which these United States stand.

III .R.I. LAW REGARDING REOPENING FOR EVIDENCE

Defendant submitted Bowerman affidavit in July 2003(Mills' first counsel) after close of discovery yet states this law prohibits one from reopening for new evidence if it was available at time of initial hearing.Am Jur2d1991 adds, "except for good reasons." 1)Bridgeport NEAR SIDS records were not available at hearing -no doctor in RI caring for children ever received them-mother stated they were "lost in the navy."After making DCYF call, Mills learned they are still on microfiche at Bridgeport Hospital (increases suspicion of abuse). As new evidence the "court" should not have denied subpoena of these records because it was information necessary to determine facts on record. As record stands, we do not know cause of apnea-question of abuse,or natural causes. A large part of testimony involved these issues with a record completely devoid of the evidence (all infancy/childhood records).Call to DCYF was about the sister, alleged victim (per CPS report)and reference person. Why did board/court/McIntyre state call was only about a girl who had attained age of 18 years? (Pg 4). Alleged victim had a skull fracture two years after her sister's NEAR SIDS. Further injuries led to epilepsy.(Two adversarial witness families per RIGL 5-37-1.5 Immunity, are not protected due to communications not made in good faith-a) false allegations of stealing Bridgeport medical records, alleging no gasoline vapors, b)tampering with taperecording (RIGL11 35 21)made at office) filing complaints prior to time limitations on activities governed by law 2)Second issue-psychiatric evaluation which McIntyre preapproved May 2002 by agreement with Harwood(was House Speaker),Craven. Mills saw Dr Rogoff who found her competent to practice medicine,to have no psychopathology. New evidence were evals by Drs Seely/Pomm(Florida),Jaeckle(Texas)-denied by "court." RI Supreme Court has allowed evals on record in Mills vs McIntyre(defendants not objecting to motion in oral argument). In Lemoine v Department of Mental Health Retardation 113 RI 285,320 A.2d 611(1974)"statute did not limit authority of superior court to remand administrative appeal to agencies so more evidence could be taken and agency could reevaluate its decision."

IV. RI STANDARD FOR REVIEW OF ADMINISTRATIVE DECISIONS

First review is by the RI Superior Court per R.I.G.L. 42 35-15. Trial justice is not permitted to substitute his judgment for that of state agency as to weight of evidence on questions of fact. Acknowledging the "court" cannot deliberate on anything which is not part of certified record, can only deliberate on testimony admitted during hearing process, one need only review this record to see that a "careful review with scrutiny"did not take place. Decisions are then subject to further review in RI Supreme Court by way of Writ of Certiorari which was submitted in compliance with the rules on December 5, 2003. Appellant in painstaking detail noted the myriads of citations where the certified record below did not support the conclusions of the "court." RI Supreme Court failed to determine if there was "some" or "any" legally competent evidence to support the lower court in their findings, declining to pose any opinion in the matter (pg 5 not due to lack of proper presentation or nonfederal ground). One need not go outside the certified record in this case to determine the injustice done, deprivation of due process and equal protection of law. Appellant was rebuffed at hearing time and time again by the physician to whom she directed her documents (those that he himself assisted her in carrying into hearing).A mother testified her infant, seen by a Cardiologist needed no further testing, as informed by doctor. The "court" writes, " no additional tests were needed." Certified record clearly shows Cardiology report @ pgs 18&19 " return visit scheduled for 6 months for repeat EKG." Decision of court is in error and so numerous and significant as to render the board and court's decisions arbitrary and capricious. It cannot be assumed that a fair, just judicial system could have read this certified record and Appellant's Writ of Certiorari and denied it based upon " no federal question existing." The law does read that if the Petitioner can "affirmatively show to contrary," that constitutional issue was presented to state courts, while highest state court failed to expressly pass on question, this Court will have jurisdiction. Rule 14.1 (g) (1) as to particularization of

when, where and how federal questions were raised was presented in writ, in appendix to complaint, and in appeal to lower court. March 1, 2001 a complaint was filed against board and McIntyre (as individual) for misrepresentation, violation of her due process and equal protection of law. RI state courts were very much apprised of the nature and substance of her claim. They stated," it has a flavor of civil rights and administrative appeal." The court determined that allegations of "actionable misconduct ..on the part of people involved , that's civil rights." The court cited Will v Michigan Department of State Police et al 491 US 58;109 S. Cr. 2304 controlled without addressing Governmental Tort Claim Liability Act or the fact that one defendant was an individual. The argument can best be described as confusing and one best decided by this Court. Lower court stated it would be best to wait for the result of Administrative Decision and then " see what the flaws are in it: the claim would be dismissed on pleadings, not on merits of issues as a civil rights case.". With the same attorney general who denied Mills that critical evidence, defendants denied Mills was alleging a violation of a property interest- which she pled precisely as that. Defendants made repeated misrepresentations at hearing. In conclusion, Mills did not bring a case against the board and McIntyre as an "end run" about Administrative Appeal but for violations of due process, equal protection, deprivation of property. It is not necessary to exhaust administrative remedies(Anthony Palazzolo vs RI et al Supreme Court of the United States No-99-2047,2001US LEXIS 4910(June28,2001) It was futile. With no resolution for years, it has left her in financial ruin and having been so egregiously labeled with some "mental disorder," as to deter her from gainful employment. The many procedural problems warrants examination by this court of the constitutionality of the APA and court's decision. Justice Flanders, RI Supreme Court stated, " there is too much bigotry, discrimination and corruption in the RI Judicial system." This Court should grant this petition and directly address the application of the Equal Protection Clause.

Respectfully submitted,

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